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THE WHIPPING POST AS A PROPER PUNISHMENT FOR WIFE BEATERS.

President Roosevelt has attracted considerable attention to his suggestion to congress to revive the whipping post as a punishment for crime. Many senators and representatives take issue with the president on the advisability of his recommendation, intimating that the whipping post is a relic of barbarism and is a cruel and unusual punishment.

Several legal and many secular journals have undertaken to express opinions on the subject, the majority of which do not compliment the wisdom of the president in making his startling and unusual suggestion. For instance, our esteemed contemporary, the *Albany Law Journal*, makes the following comment: "It is bad enough for a man to beat his wife. It is still worse for a state to beat him for it. The sheriff whipped a man brutally, and publically the other day in Maryland. This sort of punishment degrades the sufferer beyond remedy; it makes him revengeful; he will always ache to kill that sheriff; and we do not wonder. It tends to make a brute of the officer inflicting it. A self-respecting man ought to decline to dirty his hands with it. In old times they used to keep butchers off the juries in England, from the popular notion that they were bloodthirsty; a mistaken notion, probably. But we do believe that the custom of requiring a public officer to whip his fellow beings until they bleed and faint, and sometimes until they come near dying, is very reprehensible. If we must whip criminals, let us have a machine for doing it, like a carpet-beater."

With the moral phase of this question we will have nothing to do. But looking at the president's suggestion from a purely legal standpoint we take issue with those whose opposition rests solely on the assertion that whipping is a cruel and unusual punishment. It is true that whipping is rare as a punishment for crime, but the great weight of authority holds that it is neither cruel nor unusual. Commonwealth v. Wyatt, 6 Rand. (Va.) 694; Garcia v. Territory, 1 N. Mex. 415; Cornell v. State, 6 Lea (Tenn.), 624; Foote v. State, 59 Md. 264.

Whipping is the punishment for wife beating in Maryland, where it is said to be a very powerful deterrent to the commission of this cowardly crime. In the case of Foote v. State, *supra*, it was held that such a punishment was neither cruel nor unusual. In New Mexico, whipping is the punishment for stealing a horse, mule or other domestic animal. In the case of Garcia v. Territory, *supra*, it was held that punishment for such offenses by the infliction of not less than thirty, nor more than sixty, lashes on the bare back, was neither cruel nor unusual. The court said: "All punishment is more or less cruel, and the kind of punishment to be inflicted upon criminals to induce reformation and repress and deter the thief from a repetition of his larcenies has generally been left to the sound discretion of the law-making power. In old communities where law and order prevail, and some security exists for property in the honesty of the people, the mild remedy of imprisonment for theft is usually adopted, but in new countries, without jails, with many opportunities for thieves to steal and escape with their plunder, and no secure jails in which to confine them when convicted, a pressing necessity for the adoption of the punishment of whipping for the offense of larceny exists. At some stage in the existence of almost every state and territory, they have resorted to this mode of punishment, and in no instance has its infliction been held to be unconstitutional. * * * If a father, without the charge of cruelty, may administer stripes to his vicious and disobedient child may not the supreme power of a territory, state or nation administer the same kind of punishment to its vicious and lawless citizens?"

While, as we have said before, we do not desire to express an opinion on the morality or opportuneness of the president's suggestion, we do desire to say that it proposes a punishment that cannot in the slightest degree be regarded as cruel or unusual. Our personal preference is for the whipping-post as a punishment for such cowardly crimes as wife beating. It does not seem to us to be a healthy moral sentiment that shrinks altogether from corporal punishment. When

Solomon uttered the maxim that "to spare the rod would spoil the child" he declared a principle that had divine as well as human sanction, and we have always had nothing but contempt and disgust for parents and school directors and other reformers who insist on substituting "moral suasion" for the strap.

It must always be remembered that many men have no sense of shame or honor. To such men imprisonment has no terrors. In fact it has been clearly proven that in every large city during the winter, many men in order to get a good place to sleep and regular meals will commit crimes of a petty nature in order to get a sentence of two or three months in the county jail. It would hardly be expected that the temptation to crime in such instances would be as strong were the punishment less attractive. To a man who is without shame or sense of honor, and a wife beater is necessarily so, a jail sentence is a luxury; but let the law provide that the wife beater shall expiate his crime by suffering the infliction of thirty stripes on his bare back, and the whole of that being's cowardly nature will cringe with fear at the thought of it, with the result that wife beaters will become as scarce as they are in Maryland to-day.

NOTES OF IMPORTANT DECISIONS.

JURIES — DISQUALIFICATION BECAUSE OF SPECIAL DESIRE TO SEE A PARTICULAR LAW ENFORCED.—All men have their preferences, even when it comes to the laws of the land. A prohibitionist, for instance, desires above all things to see the dramshop laws enforced, while the brewer is rather indifferent to their enforcement. Such a preference, however, is not sufficient to disqualify a man to act as juror. Thus in the recent case of State v. Kelley, 78 Pac. Rep. 151, the Supreme Court of Kansas held that one who is otherwise qualified is not disqualified as a juror because he is more in favor of the enforcement of the law, that the appellant is charged with having violated than of any other law. The court expressed its opinion on the question as follows:

"The first alleged error is that the court overruled his challenge to Juror Hart. This juror on his *voir dire* stated that he was more in favor of the enforcement of the prohibitory law than any other law, and for this reason appellant maintains his challenge should have been sustained. Every man has a standard of morality of his own, and he believes that the enforcement of laws which tend to establish and maintain his standard is of more consequence than the enforcement of other laws; but all good citizens are in favor of the enforcement of all criminal laws. The degree of such desire is not a test of the qualification of one to act as a juror if he is otherwise qualified. It was not error for the court to overrule appellant's peremptory challenge to Juror Hart."

REWARD—VALIDITY OF OFFER OF REWARD BY COUNTY COMMISSIONERS.—A recent decision of some interest to boards of county commissioners is that of Felker v. Board of Commissioners of Elk County, 78 Pac. Rep. 167, where the Supreme Court of Kansas held that a board of county commissioners has no authority to offer a reward for the arrest and conviction of persons charged with the commission of offenses against the laws of the state. The court discusses the question involved in its decision in the following language:

"There is the fundamental objection," says the court, "of a lack of power in the county board to offer and pay rewards for the arrest and conviction of criminals. Persons competent to contract may ordinarily offer rewards, and when the offer is accepted and performed a liability for payment arises. The board of county commissioners, however, is a statutory organization, which has no power except such as is granted in express terms, or is necessarily implied in or incident to the powers expressed. There is no contention that express authority for the offer of rewards by the board exists; but there is a claim that it arises under the provisions giving power to the board to control all county expenditures and to make contracts in relation to the property and concerns of the county. The arrest and conviction of criminals, however, concerns the state, rather than the county. The offenses committed were violations of state laws, and the duty of punishing the offenders devolved on the state, instead of the county. The board of county commissioners is only charged with the administration of civil affairs, and the offering of rewards for the detection and conviction of those who offend against the laws of the state is not an ordinary corporate duty, nor is it incident to the administration of county affairs. The state, of course, might empower or make it the duty of the county board to offer rewards; but as it is a state function, and one outside of the scope of the ordinary duties of a county board, there must be express authority before the board can create a liability against the county by such an offer. No such power has been conferred, and when the legislature had under consideration the matter of rewards for the apprehension and conviction of criminals, the authority to offer and pay rewards was specifically given to the governor, and it was therefore impliedly withheld from every other officer or tribunal. Gen. St. 1901, §§ 5760, 7332. In the absence of an express provision giving a county

or other municipality of the state express authority to offer rewards for the apprehension and conviction of offenders against the criminal laws of the state, the authorities generally hold that no such power exists. Hanger v. City of Des Moines, 52 Iowa, 193, 2 N. W. Rep. 1105, 35 Am. Rep. 266; Gale v. Inhabitants of South Berwick, 51 Me. 174; Board of Commissioners v. Bradford, 72 Ind. 455, 37 Am. Rep. 174; Mountain v. Multnomah County, 16 Oreg. 279, 18 Pac. Rep. 464; Abel v. Pembroke, 61 N. H. 359; Crofut v. Danbury, 65 Conn. 294, 32 Atl. Rep. 365; Patton v. Stephens, 77 Ky. 324; Murphy v. Jacksonville, 18 Fla. 318, 43 Am. Rep. 323; Baker v. Washington, 7 D. C. 134; 24 A. & E. Ency of Law (2d Ed.), 944.

GAME AND GAME LAWS — WHAT ANIMALS ARE PRESUMED TO BE WILD. — Nothing shows so clearly the rapid progress of man's control over nature as the training and domesticating of wild animals. This rapid progress has necessitated an equally rapid change in the laws relating to the killing of game out of season. These laws, of course, relate to the killing of "wild" animals, and not domesticated. Thus, for instance, the killing of a hog would not be the killing of game, although the hog was originally a wild animal, and wild boars still inhabit the forests.

The point of difficulty arises, however, in construing common provisions of the game laws which make the possession of the animal protected evidence of a violation of the law. Would the possession of a goose be *prima facie* evidence that it was a wild goose? Hardly any one would contend for such a proposition, for the reason that the tame goose is the usual variety used as food while the wild goose is the exception. But suppose instead of a goose the animal killed was a deer, would the presumption be that it was wild or tame? The recent case of Crosby v. State, 48 S. E. Rep. 903, holds that in a prosecution under the game law for selling "a wild deer and part of a wild deer" during the prohibited season, a *prima facie* case for the state is not made out by showing merely that the accused had in his possession and sold during that season the meat of a deer, but the state should go further, and show affirmatively that the animal in question was "wild." Cobb, J., in speaking for the Supreme Court of Georgia, which rendered the decision, said:

"The purpose of the act was to protect game, and the wild deer protected by the act is the wild deer that would be commonly denominated 'game;' that is, deer in a natural state in the forests. Deer in captivity, no matter for what purpose so kept, would not be wild deer within the meaning of the act, because deer in such a state would not be in any sense game within the meaning of the game law. The act makes possession of the animal protected during the period of protection *prima facie* evidence of a violation of the law; but before a *prima facie* case is made out the evidence must show that the animal in possession of the accused is the animal described in the act. Deer in captivity are not usually slain, and rarely used for purposes of food. But they may be, and sometimes are, used for food. Criminal laws are construed strictly, and especially is this true of laws declaring an isolated fact to be *prima facie* evidence of crime."

Two judges dissented in this case. Lamar, J., expressed his dissent as follows: "It is no more needed to prove that the deer is a wild animal than the sheep is a domestic animal. If, therefore, a right of defense is to be founded upon the fact that a deer is tame, the burden is upon him who relies upon a fact contrary to the real nature of the animal, and contrary to the law, which classifies and treats deer as *prima facie* wild. Not only does this logical result flow from this definition of the law, but, wildness being the rule and domestication the exception, to force the state to prove a negative, and require it to establish that the deer had not been tamed, would put on it a burden impossible to be carried. It is a practical and logical impossibility to prove the negative and show that the animal does not belong to somebody. Proof that it does not belong to A, B, or C does not prove that it may not belong to X, Y, or Z.

EXEMPTIONS OF PROPERTY FROM MUNICIPAL TAXATION.

1. No Inherent Municipal Power to Exempt from Taxation.
2. When Exemptions Allowed.
3. Construction of Exemptions.
4. Same—Property Exempted—Illustrations.

1. *No Inherent Municipal Power to Exempt from Taxation.*—The rule of law is uniformly sustained that a municipal corporation possesses no inherent power to exempt from municipal taxation, property which under its charter or legislative act applicable it is authorized to tax.[1] Thus the inhabitants of a

[1] Tampa v. Kaunitz, 39 Fla. 683, 23 So. Rep. 416; Cartersville Waterworks v. Cartersville, 89 Ga 689; Shuck v. Lebanon, 24 Ky. Law Rep. 451, 68 S. W. Rep. 843, 53 S. W. Rep. 655; Louisville v. Louisville Ry. Co., 23 Ky. Law Rep. 390; Louisville v. Board of Trade, 90 Ky. 409; New Orleans v. Waterworks Co., 36 La. 432; New Orleans v. St. Charles R. R. Co., 28 La. Ann. 497; Yazoo & M. V. R. Co. v. Adams, 76 Miss. 545; Morris Ice Co. v. Adams, 75 Miss. 410; Vrana v. St. Louis, 164 Mo. 146, 64 S. W. Rep. 180; Nebraska City v. Gaslight Co., 9 Neb. 339; State v. Gracey, 11 Nev. 223; Cox Needle Co. v. Gilford, 62 N. H. 503; Dallas v. Dallas Consolidated Electric St. Ry., 95 Tex. 268, 66 S. W. Rep. 835, reversing decision of court of civil appeals, 65 S. W. Rep. 201; Thomas v.

town and territory adjoining cannot, by a petition for incorporation, exempt from municipal taxation property which otherwise would be subject thereto.[2]

Power to exempt is included in the power to tax. It can be exercised only by the legislature within the limitations of the constitution, or by the several municipal corporations of the state in pursuance of lawful authority granted to them by the legislature.[3] Under a charter empowering the municipal council to lay off the corporate territory into sewer districts and levy and collect a special tax on the real estate within any district to be drained, an ordinance exempting improvements on the real estate from such special taxes was held to be unauthorized. The opinion was announced that fixed and permanent buildings upon land form a part of it, and should be estimated in assessing its value for purposes of taxation.[4] In a Nebraska case the charter required that taxes for municipal purposes be levied "on all real, personal and mixed property * * * taxable according to the laws of the state." An ordinance was passed which in express terms exempted certain lots from municipal taxation for a term of years. Subsequently this ordinance was by special act of the legislature "declared to be legal." The ordinance was held void and also the act of the legislature, the latter as violative of the constitutional provision forbidding special laws conferring corporate powers.[5]

In accordance with the principle that municipal corporations possess no power to assess any tax not authorized by statute nor to change or modify the public laws regulating taxation, it was held in a New Hampshire case that a town cannot by grant or stipulation in a conveyance exempt land from taxation. The reasons are thus clearly stated by Perkley, J.: "If the power claimed for the town in this case were admitted, it would defeat the provision of the statute, which in plain terms requires this land to be taxed, and shift the burden imposed by the general law of taxation from this land to the polls, and the other taxable property in the town. If this land could be privileged with perpetual exemption from taxes by the act of the town, any land in any town that, by foreclosure of a mortgage, purchase of a poor farm, or in any other of the numerous ways in which towns may acquire title to lands should become the temporary property of the town, might be forever discharged from the common burden of taxation; and this would, of course, add proportionally to the weight of taxes assessed elsewhere. In short, the exemption attempted to be conferred on this land by the grant of the town is in direct conflict with the statute made under the constitution, which requires the land to be taxed. If this power were conceded to towns, and acted on generally, it would disturb the whole system of taxation imposed by law, and destroy that equality in the distribution of the public burdens which it has been a principal object with all the governments in this country to establish and secure."[6]

The Supreme Court of Appeals of Virginia, in a leading case, reviewing many authorities, held that a municipal corporation authorized by its charter to tax "all the real and personal property" within its limits, where the charter is silent as to exemptions, possess no power to make exemptions of any character. The court remarked that both upon principle and authority no such power exists. "A municipal corporation has no element of sovereignty. It is a mere local agency of the state, having no other powers than such as are clearly and unmistakably granted by the law-making power. A doubtful corporate power, it has been said, does not exist; and when any power is granted, and the mode of its exercise is prescribed, that mode must be strictly pursued." The authorities uniformly support this proposition.[7] The court pointed out that, as the imposition of taxes is a sovereign act so power to make exemptions is in its nature sovereign, and likewise resides in the legislature, unless the constitution otherwise ordains. "It is, therefore, a legal solecism to say that the power of exemption, or any other sovereign power, is inherent in a municipal corporation, which, though invested with certain governmental powers for

Snead, 99 Va. 613, 39 S. E. Rep. 586, 3 Va. Sup. Ct. Rep. 462.

[2] Hayzlett v. Mt. Vernon, 33 Iowa, 229.

[3] McTwiggan v. Hunter, 19 R. I. 265, 270, 29 L. R. A. 526, 33 Atl. Rep. 5.

[4] Prim v. Belleville, 59 Ill. 142.

[5] Hallo v. Helmer, 12 Neb. 87, 10 N. W. Rep. 568.

[6] Mack v. Jones, 21 N. H. 393, 395, 396.

[7] McQuillin, Mun. Ord. Secs.. 46 to 52 and cases: 1 Dillon, Mun. Corp. (4th Ed.), Sec. 89 *et seq.*

local purposes, is in no particular sovereign."[8]

In a leading Missouri case it was held that, in absence of express power, a contract of a municipal corporation with a railroad company exempting the property of the railroad company within the corporation limits, from taxation so long as it keeps and maintains its general offices and machine shops therein, was void. The court, per Sherwood, C. J., observed: "For though municipal corporations may make such contracts as their respective charters authorize, they cannot so contract as to surrender or embarrass their legislative or governmental powers, or prevent the full or complete performance of their public duties; duties which result from such powers which are conferred upon municipal corporations for public purposes and for public good. Such powers being in the nature of public trusts, are incapable of alienation or surrender." This rule is fundamental and of universal application.[9] "Among the most valuable and important of those public trusts and powers is that of taxation, without the exercise of which municipal government would cease to exist. No argument would seem necessary to show that the same principle, which forbids the absolute cession by a municipal corporation of the power of taxation over any given subject matter, likewise forbids that which approximates thereto. For, if, for instance, it were allowable for a municipal corporation to abdicate its taxing power *pro tanto*, this would differ only in degree and not in kind from such abdication *in toto*. The exercise of either method of surrender of its legislative or governmental power by a municipal corporation, would, if pushed to its natural and logical conclusion destroy the municipal government." The court also expressed the opinion that the idea of taxation imports the equality of apportionment and assessment upon all property. It is this which distinguishes taxation from arbitrary exaction.[10] "And it cannot be doubted that the exemption of the property of an individual or a private corporation from taxation either in whole or in part casts an unusual and inequitable burden on the property of those who have not been thus graciously favored."[11]

Under the constitution of Wisconsin providing that "the rule of taxation shall be uniform," the supreme court of that state has held that this rule extends as well to taxation by municipal corporations as to that levied by the state; and, hence, that when the legislature prescribed a different rule whereby a discrimination was made in the rate of taxation to be imposed in towns upon the same species of property the act was unconstitutional.[12]

Under a constitutional provision requiring equality and uniformity in levying taxes, it has beenheld in Maine that, even the legislature cannot confer a general power on a town to exempt by vote of the people thereof the property of a manufacturing company from taxation. Appleton, C. J., who delivered the opinion of the court, in declaring the act unconstitutional, said: "But while there are no limits to the amount of taxation for public purposes, nor on the subject matter upon which it may be imposed, the requirement that it shall be uniform and equal upon the values is made universal. To have uniformity of taxation, the imposition of and the exemption from taxation must be by one and the same authority, that of the legislature. But if it be conceded that each town has the right to tax part and exempt part of the property located therein, whatever its character, uniformity in relation to the subject matter as well as to the ratio of taxation is at an end."[13]

[8] Whiting v. West Point, 88 Va. 905, 907, 15 L. R. A. 860, with note, 29 Am. St. Rep. 750, 14 S. E. Rep. 698. "Pertaining as it does to the sovereign power to tax, the municipalities of a state have not the exempting power except as they are expressly authorized by the state. And obviously it is not competent to confer a general power to make exemptions, since that would be nothing short of a general power to establish inequality." 1 Cooley on Taxation (3d Ed.) pp. 344, 345, collating many late cases in the notes.

[9] McQuillin, Mun. Ord., Sec. 84 *et seq.* and cases.

[10] "Equality, indeed, so far as practicable, is inherent in the very idea of a tax as distinguished from arbitrary exaction, and in many of the states is enjoined by constitutional provision." 2 Dillon, Mun. Corp. (4th Ed.), Sec. 736.

[11] State v. The Hannibal & St. Joseph R. R. Co., 75 Mo. 208, 210, 211. Without special grant an agreement by a municipal corporation that one erecting sheds on certain public spaces on the levee may, in lieu of taxes thereon, pay a specific proportion of the gross profit realized, is invalid. New Orleans v. New Orleans Sugar Shed Co., 35 La. Ann. 548.

[12] Knowlton v. Supervisors, 9 Wis. 410; Hale v. Kenosha, 29 Wis. 599.

[13] Brewer Brick Co. v. Brewer, 62 Me. 62, 15 Am. Rep. 395.

A later Maine decision holds that the legislature may empower municipal corporations to exempt from taxation for a term of years property belonging to a water company in consideration of an agreement by the company to furnish, free of cost, to the local corporation, a supply of water for municipal purposes. The court distinguished this from the Brewer case on the ground that it partakes of the character of a contract and that waterworks corporations cannot be rivals of each other in any sense while manufacturing corporations of all kinds may be.[14]

The Court of Appeals of Kentucky has held that under the constitution of Kentucky, in force in 1888, a municipal corporation, though authorized by its charter to contract with a water company for water for fire and domestic purposes, had no power, as a part of the consideration of the contract, to grant the company an exemption of its property from taxation.[15]

2. *When Exemptions Allowed.*—Power to exempt specified property from taxation may exist in the state constitution, or, in absence of restriction in the organic law, it may be conferred by legislative act.[16] The judicial view is that, in the absence of constitutional prohibition, the state legislature possesses unlimited power with respect to taxation. Thus it may authorize a municipal corporation to impose or omit specific taxes on specified property, as it shall see fit in each particular case.[17]

But where the general law requires a municipal corporation to levy annually an equal and uniform tax upon all real and personal property within its limits the corporation cannot exempt particular property from taxation.[18]

So charter authority to pass such ordinance as might be necessary, to carry into effect the powers of the corporation to levy and collect taxes on all real estate within the corporate limits, does not confer power to exempt buildings on town lots from valuation in the assessed value of the lots or to discriminate as to what real estate should be taxed.[19] But full charter power to levy and collect an annual tax upon the value of all property within the corporate limits of whatever kind, real or personal, which is or may be subject to taxation by the laws of the state, was held in Georgia to authorize the exemption of certain property from taxation by ordinance, provided the tax laid be *ad valorem* and uniform upon every species of property taxed as required by the state constitution. Here it was contended that as this is a power to tax all, that all must be taxed—that the power must be exercised as it is given, or not at all. In answer the court replied: "The power to do a thing is one thing, the duty to do it another." To adopt an illustration employed by the court: The law gives the power to take up any horses, mules, cattle, hogs, goats, dogs, or other domestic animals running at large. "Would it be fair to construe this so as that under it the council could not prohibit hogs and horses from running at large and yet not prohibit goats and dogs and cows? These words simply confer the power to tax all, not exempt by state law, just as, under the constitution, the legislature may tax all.

[14] Portland v. Portland Water Co., 67 Me. 135. Compare, Maine Water Company v. Waterville, 93 Me. 586, 49 L. R. A. 294, 45 Atl. Rep. 830. A municipal corporation has no inherent power to exempt from taxation the property of a water company in consideration of the latter furnishing the city with water at a reduced rate. Altgelt v. San Antonio, 81 Tex. 436, 17 S. W. Rep. 75, 13 L. R. A. 383, following Austin v. Austin Gaslight & Coal Co., 69 Tex. 181, 7 S. W. Rep. 200. Legislative acts allowing towns to abate taxes on certain kinds of property at annual meetings, held valid. Wadleigh v. Gilman, 12 Me. 403; Stone v. Charlestown, 114 Mass. 214.

[15] Dayton v. Bellevue Water & Fuel Gaslight Co. (Ky., 1902), 68 S. W. Rep. 142, citing and commenting on many Kentucky cases.

[16] Henderson v. Hughes County, 13 S. Dak. 576, 83 N. W. Rep. 682.

[17] Detroit Citizens' St. Ry. Co. v. Detroit, 125 Mich. 673, 85 N. W. Rep. 96, 7 Detroit Leg. News, 677. Exempting lands from taxation in consideration of a grant to the city of the right to construct a sewer across them, sustained. Coit v. Grand Rapids, 115 Mich. 498, 73 N. W. Rep. 811. Abatement of general taxes in lieu of assessments for improvements, authorized by legislative act. Erie v. Griswold, 184 Pa. St. 435, 39 Atl. Rep. 231. Where the state has exempted property from taxation over and above a specified sum, the municipal corporation cannot collect an additional tax. Memphis v. Hernando Ins. Co., 6 Baxt. (65 Tenn.) 527. Under a constitutional provision authorizing the general assembly to exempt from taxation property actually used for church, schools or charitable purposes, the exemption may be from all taxation, municipal as well as state. Thus a school house which had been by the legislature exempted in general terms from taxation is thereby exempted from municipal taxes. Lefranc v. New Orleans, 27 La. Ann. 188.

[18] New Orleans v. St. Charles St. Ry. Co., 28 La. Ann. 497.

[19] Fitch v. Pinckard, 5 Ill. 69.

And it seems to us that as under a general power to tax all, the legislature may leave a portion untaxed, so under a power to tax all, granted to the corporation, it may leave a part untaxed. There are no restrictive words; they are all words of grant. The words are not that the tax shall be laid upon all, but that the power exists to tax all."[20] The same court subsequently approved this ruling.[21]

Where a private corporation located its plant, under a municipal charter granting it exemption from municipal taxation for a period of five years, it was held that the state could not withdraw the exemption as to such corporation.[22] The rule ordinarily enforced is that an exemption cannot be repealed without the consent of those in whose favor it exists, where it is in the nature of a contract obligation, but unless the beneficiary has made payment, released some right or performed some duty constituting a sufficient consideration therefor, the exemption will not be considered in the nature of a contract.[23]

3. *Construction of Exemptions.*— It is a cardinal rule of construction that exemptions from taxation cannot be extended beyond the exact and express requirements of the language used; they are construed *strictissimi juris.*[24] The exemption must be clear and unambiguous; it cannot be created by implication.[25] The reason for this rule of construction is that the right of taxation is never presumed to be relinquished and before any party can rightfully claim an exemption from the common burden it is incumbent on him to show affirmatively that the exemption claimed is authorized by law. "If there be a real doubt on the subject, that doubt must be resolved in favor of the state, and it is only where the exemption is shown to be granted in terms clear and unequivocal that the right of exemption can be maintained."[26] "The payment of taxes on account of property otherwise liable to taxation can only be avoided by clear proof of a valid contract of exemption from such payment and the validity of such contract, presupposes a good consideration therefor." The exemption "will not be inferred from facts which do not lead irresistibly and necessarily to the existence of the contract." If doubt exists the exemption will be denied.[27] Thus annual ordinances will not be construed as granting exemptions from taxation of lands specified therein beyond the time of each specific ordinance.[28] Such a contract will not be implied merely from the fact that the marshal of the city customarily announced, when lands of like character were exposed for sale, that the same were not subject to municipal taxes, nor from the fact that it was generally understood by the public that such property would be so exempt, nor from the further fact that for many years the city never undertook to exercise over this class of property its powers of taxation.[29]

[20] Athens v. Long, 54 Ga. 330.

[21] Waring v. Savannah, 60 Ga. 93, 96; Cutliff v. Albany, 60 Ga. 597, 599.

[22] Middlesboro v. New South Brewing & Ice Co., 108 Ky. 351, 56 S. W. Rep. 427; Com. v. Burnside & C. R. Co., 95 Ky. 60, 23 S. W. Rep. 868.

[23] 12 Am. & Eng. Ency. of Law (2d Ed.), pp. 385, 386 and cases.

[24] Railroad v. Thomas, 132 U. S. 174, 10 Sup. Ct. Rep. 68, 33 L. Ed. 602; Philadelphia & W. R. R. Co. v. Maryland, 10 How. (U. S.) 393; Charles River Bridge Proprietors v. Warren Bridge Proprietors, 11 Pet. (U. S.) 420; Providence Bank v. Billings, 4 Pet. (U. S.) 514; Jefferson Branch Bank v. Skelly, 1 Black. (U. S.) 436; Savannah v. La Roche, 55 Ga. 309; Tubbessing v. Burlington, 68 Iowa, 691, 24 N. W. Rep. 514; Kilgus v. Orphanage, 94 Ky. 444, 22 S. W. Rep. 752; Kimball Carriage Co. v. Manchester, 67 N. H. 483; Phillip & Exeter Academy v. Exeter, 58 N. H. 306; Liondale, etc., Print Works v. McGrath, 68 N. J. L. (39 Vroom.) 215, 52 Atl. Rep. 714; People v. Feitner, 75 N. Y. Supp. 738, 71 App. Div. 479; People v. Campbell, 93 N. Y. 196. Memorandum indorsed on the assessment roll not competent to prove exemption. Darlington v. Atlantic Trust Co., 68 Fed. Rep. 849, 16 C. C. A. 28.

[25] Scotland County v. Missouri, Iowa & Nebraska Ry. Co., 65 Mo. 134; State v. Arnold, 136 Mo. 446, 450.

[26] Baltimore v. Grand Lodge of A. F. & A. M., 60 Md. 280, approved in Frederick, E. L. & P. Co. v. Frederick, 84 Md. 599, 36 L. R. A. 130.

[27] Wells v. Savannah, 181 U. S. 531, 539, 540, 21 Sup. Ct. Rep. 697, 45 L. Ed. 986; Tucker v. Ferguson, 22 Wall. (U. S.) 527, 573; Bank of Commerce v. Tennessee, 161 U. S. 134, 146.

[28] Wells v. Savannah, 181 U. S. 531, 540.

[29] Wells v. Savannah, 107 Ga. 1, 32 S. W. Rep. 669, affirmed 181 U. S. 531. Legislative act permitted exemption for six years. Held, council vote to exempt for five years, was valid. Portland v. Portland Water Co., 67 Me. 135. Term does not necessarily begin to run from passage of act, but may begin when exemption voted by council, if taken within reasonable time afterwards. Portland v. Portland Water Co., 67 Me. 135. Exemptions cannot be extended beyond time named. Boody v. Watson, 63 N. H. 320. Contract for immunity from taxation will not be recognized unless couched in terms too plain to be mistaken. Chicago, B. & K. C. R. Co. v. Guffey, 120 U. S. 569; Monroe Waterworks Co. v. Monroe, 110 Wis. 11, 18, 85 N. W. Rep. 685. Exemptions cannot be extended beyond amount specified in the municipal charter. New

4. *Same — Property Exempted — Illustrations.*—In accordance with the strict rule of construction usually invoked only such property as is specifically enumerated in the municipal charter or legislative act applicable is or can be exempted by municipal action from taxation for local purposes.[30] Thus under a law providing that "towns may by vote exempt from taxation * * * any establishment * * * proposed to be erected and put in operation therein and the capital used in operating the same for the manufacture of fabrics of cotton * * * or any other material, and such vote shall be a contract binding for the term specified therein," a vote to exempt "any establishment thereafter erected in this town for the manufacture of fabrics," was held not to be sufficient to exempt an establishment not expressly mentioned in the vote.[31] So a charter provision exempting from municipal taxation "goods and produce for export or in transit, owned or in possession of any inhabitant of the city," was construed to cover only property in possession of a consignee simply on storage or to be forwarded.[32] So a charter provision authorizing the municipal corporation to levy and collect a tax on the "value of goods and produce not for export or in transit," owned or in possession of any inhabitant of the city was held not to exempt pork owned by non-residents of the city, which had been brought by them within the city to be slaughtered, cured and stored there subject to their order.[33] But a charter provision "exempting goods and produce for export on in transit" was held to include pork packed for export and in process of shipment to a foreign market.[34] A contract between a municipal corporation and a street railroad company that "the road, rolling and live stock of said company" shall be exempt from taxation, was held not to exempt stables, shops and houses for storage of lumber. The fact that the president of the company testified that he understood the word "road" to include such appurtenances or conveniences was regarded as immaterial.[35] In Vermontit has been held that a vote of a town exempting the capital stock of a manufacturing corporation from taxation under the general statute, also exempts shares of the shareholders of such corporation.[36] Under a law permitting a town council to grant the right to lay water pipes in a highway and to erect and maintain reservoirs, including the power to exempt such pipes and reservoirs from taxation, it was held the exemption could only be made as one of the terms of the grant and could not be given to works already built.[37] Like strict construction was applied to a Kentucky case. The constitution provided that the legislature might authorize municipal corporations to exempt manufacturing establishments from municipal taxation for a period of five years "as an inducement to their location." The statute authorized municipal corporations by ordinance to exempt manufacturing establishments and machinery from municipal taxation for a period of five years "from the establishment in said city." Here it was held that the exemption could not be granted to manufacturing plants already established, even to such as had been operated for several years, although only partially estab-

London v. Colby Academy, 69 N. H. 443. Exemptions from taxation do not include exemptions from local assessments or taxation (sometimes called) for improvements, as the construction of streets, sewers, etc. 2 Dillon, Mun. Corp. (4th Ed.) § 777.

[30] Garrison v. Laurens, 55 S. Car. 551; German Savings Bank v. Darlington, 50 S. Car. 337.

[31] Franklin Falls Pulp Co. v. Franklin, 66 N. H. 27, 20 Atl. Rep. 333.

[32] Madison v. Fitch, 18 Ind. 33; Madison v. Martin, 18 Ind. 35.

[33] Powell v. Madison, 21 Ind. 355.

[34] Fitch v. Madison, 24 Ind. 425.

[35] Atlanta St. R. Co. v. Atlanta, 66 Ga. 104.

[36] Richardson v. St. Albans, 72 Vt. 1, 47 Atl. Rep. 100. The Act of Congress admitting Louisiana into the Union exempting each and every "tract of land" sold by congress from any state or local tax for the term of five years, held to embrace lots sold by the United States. New Orleans v. Picquet, 2 La. Ann. 474. A charter provision which exempts from assessment merchandise on which a license tax is paid; held that a merchant paying a license tax is not liable to an additional tax for the reconstruction of streets and alleys; this being a purely municipal object, although under the law he is liable to a school tax, and to his share of a tax imposed to aid railroads. Bamberger v. Louisville, 82 Ky. 337. A bridge situated within corporate limits, but beyond the population of the municipality, and which enjoys neither actual nor presumed benefits from its municipal government, is nevertheless under the present constitution of Kentucky, subject to municipal taxation. Louisville Bridge Co. v. Louisville, 22 Ky. Law Rep. 703, 58 S. W. Rep. 598.

[37] Bowen v. Newell, 16 R. I. 238, 14 Atl. Rep. 873. Act allowing exemption of property of water company not in existence when act passed, held that this would include as taxable, all real estate at a value according with the condition it was then in, and would exclude all personal property acquired after that time. Portland v. Portland Water Co., 67 Me. 135.

lished.[38] In Maryland it has been held that an electric light company is not a "manufacturing industry" within the meaning of an ordinance exempting such industries from municipal taxation passed by virtue of express legislative grant.[39] But in New York, under a statute exempting "manufacturing corporations" from taxation, it was judicially declared that an electric light company was within the exemption.[40] Municipal charters or legislative acts applicable often exempt or permit exemptions of property used for charitable or educational purposes;[41] lands used exclusively for agricultural or farming purposes;[42] lands "vacant and unoccupied;"[43] property of gas and water companies;[44] certain property of railroad corporations,[45] and property used in the "public service" or employed for "public purposes." All such exemptions being special grants or favors are construed strictly against those claiming the exemption and in favor of the public. Thus a general law exempting from taxation "public property used exclusively for any public purpose," as specified by the state constitution, was construed as not authorizing the exemption of real property owned and leased by a private party, who receives and retains all revenues derived from such leasing, although under contract with the owners, the municipal authorities have ordained that such property shall be a public market house or place and shall be exempt from taxation, and it is thereafter exclusively used for such public purposes, subject to necessary and desirable municipal regulations.[46] So authority to exempt from taxation property in consideration of "public service," was held not to authorize an agreement by a municipal corporation to exempt a hotel from taxation although the hotel was built on the faith of the agreement. Such exemption was regarded as not in consideration of public service.[47]

EUGENE MCQUILLIN.

St. Louis, Mo.

[38] Middlesboro v. New South Brewing & Ice Co., 108 Ky. 357, 56 S. W. Rep. 427.

[39] Frederick Electric Light & Power Co. v. Frederick, 84 Md. 599, 36 L. R. A. 130; S. P. Com. v. Northern Electric Light & P. Co., 145 Pa. St. 105, 14 L. R. A. 107.

[40] People v. Wemple, 129 N. Y. 543, 14 L. R. A. 708.

[41] Cook County v. Chicago, 103 Ill. 646; People v. Commissioners of Taxes and Assessments of New York, 6 Hun (N. Y.), 109; State v. Addison, 2 S. Car. 499; Morgan v. Cree, 46 Vt. 773, 14 Am. Rep. 640. Power to exempt by ordinance from city taxes religious and charitable societies. State v. Addison, 2 S. Car. 499. Personal estate of corporations organized for other than business purposes shall be exempt. Johnson Home, etc., v. Seneca Falls, 55 N. Y. Supp. 803, 37 App. Div. 147.

[42] Ryan v. Central City (Ky.), 54 S. W. Rep. 2. The fact that the owner is a merchant and has erected a dwelling on the lands and resides therein will not prevent exemption. Winzer v. Burlington, 68 Iowa, 279, 27 N. W. Rep. 241; Tubbesing v. Burlington, 68 Iowa, 691, 24 N. W. Rep. 514, 28 N. W. Rep. 19. Under a charter exempting from taxation all such property and negroes within the corporate limits as "shall be employed exclusively for agricultural purposes" it was adjudged that a planter whose plantation extending into the village and who resided, with all his slaves, on his plantation, within the corporate limits, was liable to be taxed for his lot, residence and domestic servants. The court was of the opinion that they, although part of an agricultural establishment, not being employed exclusively for agricultural purposes, were not exempted. State v. Newberry, 12 Rich. Law (S. Car.), 339.

[43] Gillett v. Hartford, 31 Conn. 351; Carriger v. Morristown, 1 Lea (69 Tenn.), 116; Baldwin v. Hastings, 83 Mich. 639, 47 N. W. Rep. 507.

[44] Cartersville Imp., Gas & Water Co. v. Cartersville, 89 Ga. 683, 16 S. E. Rep. 25; Cartersville Water Co. v. Cartersville, 89 Ga. 689, 16 S. E. Rep. 70; Grant v. Davenport, 36 Iowa, 397; Covington Gaslight Co. v. Covington, 84 Ky. 94; Covington v. Covington Gaslight Co. (Ky.), 2 S. W. Rep. 326; Newport Light Co. v. Newport (Ky.), 20 S. W. Rep. 434; Ludington W. S. Co. v. Ludington, 119 Mich. 480; Monroe Waterworks Co. v. Monroe, 110 Wis. 11, 85 N. W. Rep. 685.

[45] Various provisions construing laws exempting railroad property from taxation. Moore v. Holliday, 4 Dill. 52, Fed. Cas. No. 9,765; St. Joseph v. Hannibal & St. J. R. Co., 39 Mo. 476; Livingston County v. Hannibal & St. J. R. Co., 60 Mo. 516; City Council of Augusta v. Georgia R. & Banking Co., 26 Ga. 651; Macon v. Central R. & Banking Co., 50 Ga. 620; Atlanta v. Georgia Pac. Ry. Co., 74 Ga. 16; Neustadt v. Illinois Cent. R. Co., 31 Ill. 484; Dunlieth & D. Bridge Co. v. Dubuque, 32 Iowa, 427; Louisville City Ry. Co. v. Louisville, 67 Ky. (4 Bush.) 478; Elizabethtown & P. R. Co. v. Elizabethtown, 75 Ky. (12 Bush.) 233; Newport v. South Covington & C. St. Ry. Co., 89 Ky. 29, 11 S. W. Rep. 954; Second Municipality of New Orleans v. New Orleans & C. R. Co., 10 Rob. 187; Detroit v. Detroit Ry. Co., 76 Mich. 421, 43 N. W. Rep. 447; Morris & E. R. Co. v. Haight, 35 N. J. Law 40.

[46] State v. Cooley, 62 Minn. 183, 29 L. R. A. 777, 64 N. W. Rep. 379.

[47] Lancaster v. Clayton, 86 Ky. 373, 5 S. W. Rep. 864; Weeks v. Milwaukee, 10 Wis. 242. City cannot loan its credit to a manufacturing enterprise and use the taxing power to meet the liability thus incurred. "If it be said that a benefit results to the local public of a town by establishing manufactures the same may be said of any other business or pursuit which employs capital or labor. The merchant, the mechanic, the innkeeper, the banker, the builder, the steamboat owner, are equally deserving the aid of the citizens by forced contributions." Per Mr. Justice Miller, in Loan Association v. Topeka, 20 Wall. (87 U. S.) 655, 665. The maintenance of children at industaial school, held "public service." Wisconsin Industrial School v. Clark County, 103 Wis. 651, 79 N. W. Rep. 422.

FRAUDULENT CONVEYANCES—SALE IN BULK OF BUSINESS OF RESTAURANT.

PLASS v. MORGAN.

Supreme Court of Washington, December 12, 1904.

Pierce's Code, § 5346, declares that it shall be unlawful to purchase any "stock of goods, wares, or merchandise" in bulk for cash, or on credit, without requiring the vendor or his agent, before payment is made, to give to the buyer a sworn statement of the names and addresses of his creditors, etc. Held, that a sale of the business and appliances of a boarding house and restaurant was not exempt from the provisions of such section, and that a failure to comply therewith rendered the sale invalid as to the seller's creditors.

DUNBAR, J.: Appellant commenced this action to recover judgment against the defendant, and in such action caused a writ of garnishment to be served on the respondent, who answered that he had no property or effects belonging to the defendant. The plaintiff controverted said answer by the following affidavit: "Charles H. Plass, being duly sworn, on oath deposes and says: That he is not satisfied with the answer of the garnishee herein, and has good reason to believe and does believe that the answer of said garnishee is correct in this: that on the —— day of March, 1903, the defendant herein was engaged in the business of conducting a boarding house and restaurant; that on said day the garnishee defendant herein purchased all the goods, wares, and merchandise in bulk of said defendant for cash, and paid the said defendant therefor; that said garnishee defendant, before paying said defendant, did not demand of and receive from said defendant a sworn statement containing the names and addresses of the creditors of said defendant, and did not pay or see that the purchase money of said property or any part thereof was applied to the payment of the *bona fide* claims of the creditors of said defendant; that said stock of goods, wares, and merchandise was at said time fairly and reasonably worth the sum of $600; that at said time affiant was a creditor of said defendant for the sum sued upon herein, the same being on account of goods, wares, and merchandise sold and delivered to said defendant in the conduct of the aforesaid business." The garnishee defendant demurred to the reply and affidavit of the plaintiff on the following grounds, to-wit: "(1) The said reply and affidavit does not state facts sufficient to controvert the answer of said L. A. Metzger, the garnishee in this case. (2) That it appears upon the face of said affidavit and reply that the law of 1901, applicable to the sale of merchandise in bulk, does not apply in this case." This demurrer was sustained, the writ of garnishment dismissed, and the garnishee discharged, with judgment for costs. Judgment was entered in favor of the plaintiff and against the defendant for the sum of $184. From the judgment of the court sustaining the demurrer and dismissing the garnishment proceeding, this appeal was taken.

So that the only question that is presented is whether or not section 5346, Pierce's Wash. Code, applies to a transaction of the kind set forth in the plaintiff's controverting affidavit. The section is as follows: "It shall be the duty of every person who shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, before paying to the vendor, or his agent, or representative, or delivering to the vendor, or his agent, any part of the purchase price thereof, or any promissory note, or other evidence thereof, to demand of and receive from such vendor, or agent, * * * a written statement, sworn to substantially as hereinafter provided, of the names and addresses of all the creditors of said vendor, to whom said vendor may be indebted, together with the amount of the indebtedness due or owing, and to become due or owing, by said vendor to each of such creditors; and it shall be the duty of said vendor, or agent, to furnish such statement, which shall be verified by an oath. * * *" It is contended by the respondent that the law uses the special term "stock of merchandise," which, according to accepted English definitions, relates to the business of merchandising alone, and was clearly so intended by the legislature; that courts will not so construe the language of the statute as to make it include that which its plain and usual meaning will not impart, or render its application absurd or ridiculous in its operation.

The learned counsel, however, does not strictly quote the language of the statute. It does not use the special term "stocks of merchandise," but uses the term "any stock of goods, wares or merchandise in bulk." The word "any" is comprehensive, and so is the word "stock." There is no limit placed by the legislature on the meaning of the word "stock." A stock of goods may mean, under the plain language of the statute, a great many different kinds of goods, different kinds of wares, or different kinds of merchandise. It was the evident intent of the legislature to prevent the perpetration of fraud upon the creditors of people who are engaged in business, and, while there seems to be no authority submitted on this proposition, and none that we have been able to obtain, we do not see our way clear to exempt the defendant in this case from the liabilities imposed by this statute, or to deprive his creditors of the protection which it seems to guarantee to those who furnish goods to parties engaged in business. Section 5349 throws some light upon what the intention of the legislature was, where it is provided: "Any sale or transfer of a stock of goods, wares or merchandise out of the usual or ordinary course of business of the vendor, or whenever substantially the entire business or trade therefor conducted by the vendor, shall be sold or conveyed, or whenever an interest in or to the business or trade of the vendor is sold or conveyed, or is attempted to be sold or conveyed, shall be deemed a sale and transfer in bulk in contemplation of this act." It seems to us that

to give the construction to this statute that was placed upon it by the trial court would be to limit the effect which was intended by the legislature in the passage of the act.

The judgment will be reversed, with instructions to overrule the demurrer to the controverting affidavit.

FULLERTON, C. J., and HADLEY, ANDERS, and MOUNT, JJ., concur.

NOTE—*Construction of Statutes Making Sales in Bulk Fraudulent.*—In an increasing number of states the legislatures have become responsible for the passage of statutes providing that sales in bulk of stocks of merchandise, or any portion thereof, otherwise than in the ordinary course of business, shall be presumed to be fraudulent and void as against the creditors of the seller, unless the parties make a detailed inventory showing quantity and cost price to the seller of the goods sold, at least five days before the sale, and unless the purchaser makes diligent inquiry as to the names of the creditors of the seller and gives them a certain number of days' notice, stating cost price and price to be paid.

Probably the first consideration in construing such statutes is whether they violate the constitution in any respect. On this subject no case is more important or covers the subject so thoroughly as that of Neas v. Borches, 109 Tenn. 398, where the court held first, that an act similar to the one just set forth was a valid exercise of the police power of the state; second, that it was not void as arbitrary class legislation; and, third, that it did not take away the property of the citizen, but only regulated sales of merchandise in such way as to prevent fraud. It might be mentioned in passing that Justice Wilkes filed a most vigorous dissenting opinion, and, in our opinion, stated the case against the constitutionality of such legislation, in its most favorable aspect. As to constitutionality of such legislation, see 59 Cent. L. J. 114.

Outside of the constitutionality of such legislation, the next important question is as to its construction; because, if this construction should be strict and hew close to the line, the result would, as Justice Wilkes well prophesies, be very embarrassing to business and practically destroy attempts to sell a business or stock of merchandise at private sale. But it is gratifying to note that while the courts will keep in view the purpose of such legislation and not destroy its effectiveness by looseness of construction, yet, nevertheless, the interests of a purchaser under such sales will be safely guarded and if he acts with ordinary care in seeking to discover incumbrances or liens against the property he will be exonerated from the penalty imposed by the statute. This doctrine was laid down and amplified in the recent and important case of Fisher v. Hermann (Wis.), 95 N. W. Rep. 392. In that case the trial court found that plaintiff paid full value for the merchandise, that he searched the records for mortgages and other liens thereon, paid all claims discovered by him, by authority of the seller, and turned over a small balance of the consideration, having no knowledge that the seller had other creditors, nor any information concerning the seller's property aside from the stock of merchandise. The court held that the evidence showed that the plaintiff acted with ordinary care, and rebutted the presumption of fraud predicated on the want of notice to other creditors. The court had previously laid down the rule that want of notice to the seller's creditors is only presumptive, and not conclusive evidence of fraud.

In another recent case, however, the court shows that a different construction will be put upon such statutes where the purchaser is negligent and makes little or no effort to find out what claims stand against the property to be sold. Blossman & Co. v. Friske (Tex. Civ. App.), 76 S. W. Rep. 73. In this case plaintiff, who was an insolvent farmer, ignorant of the value of goods, purchased the entire stock of R, an insolvent merchant, in order, as plaintiff testified, to collect a debt due from R, of $400. The entire stock was worth not to exceed $1,000, but plaintiff purchased, without taking an inventory, examining the stock or asking the price of any article, for $2,000, which he paid with the $400 debt, and notes executed by him to R for the balance. The goods were seized on writ of attachment by the defendants, creditors of R, and plaintiff brings this suit to charge such defendants with damages for conversion. The court held that under the facts the plaintiff had been negligent in his purchase and that his failure to take steps to discover creditors or claims against the property was proof of fraud under the statute.

JETSAM AND FLOTSAM.

REMARKABLE CASE OF ARREST FOR MURDER.

The following narrative has been handed us for publication by a member of the bar. There is no doubt of the truth of every fact stated; and the whole affair is of so extraordinary a character as to entitle it to publication, and commend it to the attention of those at present engaged in discussing reforms in criminal jurisprudence, and the abolition of capital punishment:

"In the year, 1841, there resided, at different points in the state of Illinois, three brothers by the name of Trailor. Their christian names were William, Henry and Archibald. Archibald resided at Springfield, then as now the seat of government of the state. He was a sober, retiring and industrious man of about thirty years of age; a carpenter by trade and a bachelor, boarding with his partner in business—a Mr. Myers. Henry, a year or two older, was a man of like retiring and industrious habits; had a family, and resided with it on a farm at Clary's Grove, about twenty miles distant from Springfield in a north-westerly direction. William, still older, and with similar habits, resided on a farm in Warren county, distant from Springfield something more than a hundred miles in the same northwesterly direction. He was a widower with several children. In the neighborhood of William's residence there was, and had been for several years, a man by the name of Fisher, who was somewhat above the age of fifty; had no family and no settled home, but who boarded and lodged a while here and a while there, with persons for whom he did little jobs of work. His habits were remarkably economical, so that an impression got about that he had accumulated a considerable amount of money. In the latter part of May, in the year mentioned, William formed the purpose of visiting his brothers at Clary's Grove and Springfield; and Fisher, at the time having his temporary residence at his house, resolved to accompany him. They set out in a buggy with a single horse. On Sunday evening they reached Henry's residence, and stayed over night. On Monday morn-

ing, being the first Monday of June, they started on to Springfield, Henry accompanying them on horseback. They reached town about noon, met Archibald, went with him to his boarding house, and there took up their lodgings for the time they should remain. After dinner, the three Trailors and Fisher left the boarding house in company, for the avowed purpose of spending the evening together in looking about the town. At supper the Trailors had all returned, but Fisher was missing, and some inquiry was made about him. After supper the Trailors went out professedly in search of him. One by one they returned, the last coming in after late tea time, and each stating that he had been unable to discover anything of Fisher. The next day, both before and after breakfast, they went professedly in search again, and returned at noon, still unsuccessful. Dinner again being had, William and Henry expressed a determination to give up the search, and start for their homes. This was remonstrated against by some of the boarders about the house, on the ground that Fisher was somewhere in the vicinity, and would be left without any conveyance, as he and William had come in the same buggy.

The remonstrance was disregarded, and they departed for their homes respectively. Up to this time the knowledge of Fisher's mysterious disappearance had spread very little beyond the few boarders at Myers,' and excited no considerable interest. After the lapse of three or four days Henry returned to Springfield for the ostensible purpose of making further search for Fisher. Procuring some of the boarders, he, together with them and Archibald, spent another day in ineffectual search, when it was again abandoned, and he returned home. No general interest was yet excited. On the Friday week after Fisher's disappearance the postmaster at Springfield received a letter from the postmaster nearest William's residence, in Warren county, stating that William had returned home without Fisher, and was saying, rather boastfully, that Fisher was dead, and had willed him his money, and that he had got about fifteen hundred dollars by it. The letter further stated that William's story and conduct seemed strange, and desired the postmaster at Springfield to ascertain and write what was the truth in the matter. The postmaster at Springfield made the letter public, and at once excitement became universal and intense. Springfield, at that time, had a population of about 3,500, with a city organization. The attorney general of the state resided there. A purpose was forthwith formed to ferret out the mystery, in putting which into execution the mayor of the city and the attorney general took the lead. To make search for, and, if possible, find the body of the man supposed to be murdered, was resolved on as the first step. In pursuance of this, men were formed into large parties, and marched abreast in all directions, so as to let no inch of ground in the vicinity remain unsearched. Examinations were made of cellars, wells and pits of all descriptions, where it was thought possible the body might be concealed. All the fresh or tolerably fresh graves t the graveyard were pried into, and dead horses and ead dogs were disinterred, where, in some instances' hey had been buried by their partial masters. This earch, as has appeared, commenced on Friday. It ontinued until Saturday afternoon without success, when it was determined to despatch officers to arrest William and Henry at their residences respectively. he officers started on Sunday morning. Meanwhile, he search for the body was continued, and rumors ot afloat of the Trailors having passed, at differen times and places, several gold pieces, which were readily supposed to have belonged to Fisher. On Monday, the officers sent for Henry, having arrested him, arrived with him. The mayor and attorney general took charge of him, and set their wits to work to elicit a discovery from him. He denied, and denied, and persisted in denying. They still plied him in every conceivable way, till Wednesday, when, protesting his own innocence, he stated that his brothers, William and Archibald, had murdered Fisher; that they had killed him, without his (Henry's) knowledge at the time, and made a temporary concealment of his body, that, immediately preceding his and William's departure from Springfield for home, on Tuesday, the day after Fisher's disappearance, William and Archibald communicated the fact to him, and engaged his assistance in making a permanent concealment of the body; that, at the time he and William left professedly for home, they did not take the road directly, but, meandering their way through the streets, entered the woods at the north west of the city, two or three hundred yards to the right of where the road they should have traveled, entered them; that, penetrating the woods some few hundred yards, they halted, and Archibald came a somewhat different route, on foot, and joined them; that William and Archibald then stationed him (Henry) on an old and disused road that ran near by, as a sentinel, to give warning of the approach of any intruder; that William and Archibald then removed the buggy to the edge of a dense brush thicket, about forty yards distant from his (Henry's) position, where, leaving the buggy, they entered the thicket, and in a few minutes returned with the body, and placed it in the buggy; that from his station he could and did distinctly see that the object placed in the buggy was a dead man, of the general appearance and size of Fisher; that William and Archibald then moved off with the buggy in the direction of Hickox's mill pond, and after an absence of half an hour, returned, saying they had put him in a safe place; that Archibald then left for town, and he and William found their way to the road, and made for their homes. At this disclosure, all lingering credulity was broken down, and excitement rose to an almost inconceivable height. Up to this time, the well known character of Archibald had repelled and put down all suspicions as to him. Till then, those who were ready to swear that a murder had been committed, were almost as confident that Archibald had had no part it. But now, he was seized and thrown into jail; and indeed, his personal security rendered it by no means objectionable to him.

And now came the search for the brush thicket, and the search of the mill pond. The thicket was found, and the buggy tracks at the point indicated. At a point within the thicket, the signs of a struggle were discovered, and a trail from thence to the buggy track was traced. In attempting to follow the track of the buggy from the thicket, it was found to proceed in the direction of the mill pond, but could not be traced all the way. At the pond, however, it was found that a buggy had been backed down to, and partially into the water's edge. Search was to be made in the pond; and it was made in every imaginable way. Hundreds and hundreds were engaged in raking, fishing and draining. After much fruitless effort in this way, on Thursday morning the mill dam was cut down, and the water of the pond partially drawn off, and the same processes of search again gone through with. About noon of this day, the officer sent for William, returned, having him in cus-

tody; and a man calling himself Dr. Gilmore, came in company with them. It seems that the officer arrested William at his own house, early in the day on Tuesday, and started to Springfield with him; that after dark awhile, they reached Lewiston, in Fulton county, where they stopped for the night; that late in the night this Dr. Gilmore arrived, stating that Fisher was alive at his house, and that he had followed on to give the information so that William might be released without further trouble; that the officer, distrusting Dr. Gilmore, refused to release William, but brought him on to Springfield, and the doctor accompanied them.

On reaching Springfield, the doctor reasserted that Fisher was alive, and at his house. At this, the multitude for a time was utterly confounded. Gilmore's story was communicated to Henry Trailor, who without faltering, reaffirmed his own story about Fisher's murder. Henry's adherence to his own story was communicated to the crowd, and at once the idea started, and became nearly, if not quite universal, that Gilmore was a confederate of the Trailors, and had invented the tale he was telling, to secure their release and escape. Excitement was again at its zenith. About three o'clock the same evening, Myers, Archibald's partner, started with a two-horse carriage, for the purpose of ascertaining whether Fisher was alive, as stated by Gilmore, and if so, of bringing him back to Springfield with him. On Friday a legal examination was gone into before two justices, on the charge of murder against William and Archibald. Henry was introduced as a witness by the prosecution, and on oath reaffirmed his statements, as heretofore detailed, and at the end of which he bore a thorough and rigid cross-examination without faltering or exposure. The prosecution also proved by a respectable lady, that on the Monday evening of Fisher's disappearance she saw Archibald, whom she well knew, and another man whom she did not know, but whom she believed at the time of testifying to be William (then present), and still another, answering the description of Fisher, all enter the timber at the north west of the town (the point indicated by Henry), and after one or two hours, saw William and Archibald return without Fisher. Several other witnesses testified, that on Tuesday, at the time William and Henry professedly gave up the search for Fisher's body, and started for home, they did not take the road directly, but did go into the woods, as stated by Henry. By others, also, it was proved, that since Fisher's disappearance, William and Archibald had passed rather an unusual number of gold pieces. The statements heretofore made about the thicket, the signs of a struggle, the buggy tracks, etc., were fully proven by numerous witnesses. At this the prosecution rested. Dr. Gilmore was then introduced by the defendants. He stated that he resided in Warren county, about seven miles distant from William's residence; that on the morning of William's arrest, he was out from home, and heard of the arrest, and of its being on the charge of the murder of Fisher; that on returning to his own house, he found Fisher there; that Fisher was in very feeble health, and could give no rational account as to where he had been during his absence; that he (Gilmore) then started in pursuit of the officer, as before stated; and that he should have taken Fisher with him, only that the state of his health did not permit. Gilmore also stated that he had known Fisher for several years, and that he had understood he was subject to temporary derangement of mind, owing to an injury about his head received in early life. There was about Dr. Gilmore so much of the air and manner of truth, that his statement prevailed in the minds of the audience and of the court, and the Trailors were discharged, although they attempted no explanation of the circumstances proven by the other witnesses. On the next Monday, Myers arrived in Springfield, bringing with him the now famed Fisher, in full life and proper person. Thus ended the strange affair; and while it is readily conceived that a writer of novels could bring a story to a more perfect climax, it may be well doubted whether a stranger affair ever occurred. Much of the matter remains in mystery to this day. The going into the woods with Fisher, and returning without him, by the Trailors; their going into the woods at the same place the next day, after they professed to have given up the search; the sign of a struggle in the thicket, the buggy tracks at the edge of it, and the location of the thicket, and the signs about it, corresponding precisely with Henry's story, are circumstances that have never been explained.

William and Archibald have both died since — William in less than a year, and Archibald in about two years after the supposed murder. Henry is still living, but never speaks of the subject.

It is not the object of the writer of this to enter into the many curious speculations that might be indulged upon the facts of this narrative; yet he can scarcely forbear a remark upon what would, almost certainly have been the fate of William and Archibald, had Fisher not been found alive. It seems he had wandered away in mental derangement, and, had he died in this condition, and his body been found in the vicinity, it is difficult to conceive what could have saved the Trailors from the consequence of having murdered him. Or, if he had died, and his body never found, the case against them would have been quite as bad: for, although it is a principle of law that a conviction for murder shall not be had, unless the body of the deceased shall be discovered, it is to be remembered that Henry testified that he saw Fisher's dead body.

BOOK REVIEWS.

GOULD'S NATIONAL BANK ACT.

No piece of national legislation is more important to the business interests of the country than the National Bank Act. It is therefore, a matter on which the profession is to be congratulated that such a learned jurist as John M. Gould should have undertaken to annotate this important statute.

In Mr. Gould's work, the provisions of the National Bank Act of 1864 (Title 62 of the Revised Statutes) are ully reviewed, the amendments being inserted in their proper places, and the whole being annotated with all the decisions of the courts, both federal and state, to September, 1904, explaining or modifying the various provisions.

Printed in one volume of 288 pages and published by Little, Brown & Co., Boston, Mass.

PATTERSON'S UNITED STATES AND THE STATES UNDER THE CONSTITUTION.

A new edition of the work announced as the subject of this review has just been prepared for publication, rewritten, revised and enlarged by the author, Mr. C. Stuart Patterson, author of Railway Accident Law, and former dean of the University of Pennsylvania.

During the sixteen years which have elapsed since

the original publication of this work, there has been a greater number of cases involving constitutional law than at any similar period, and the questions discussed have been of the utmost importance.

This new edition follows the plan of the former, but much new and important matter has been introduced. The Insular Cases, the Anti-trust Act, and problems arising out of State Regulation of Railroad Rates are discussed at length; the Interstate Commerce Act has been carefully considered, and the host of decisions upon provisions of the fourteenth amendment have been collected, a concise yet comprehensive statement being given of the decisions of the supreme court upon "due process of law," and upon "the equal protection of the laws."

Printed in one volume of 347 pages and published by T. & J. W. Johnson & Co., Philadelphia, Pa.

CYLCOPEDIA OF LAW AND PROCEDURE, VOL. 14.

With characteristic energy and promptitude in the execution of its great undertaking, the American Law Book Company of New York has reached the fourteenth milestone in the publication of the "Cyclopedia of Law and Procedure," and the volume just issued is a most welcome addition to the library of the courts and the legal profession. The new volume is a strong integral unit in a great chain of technical literature spanning a broad area of time and experience. It discloses the same patient, firm, and durable work which distinguishes the preceding volumes, together with improvement in methods, care, and precision, which should be expected from an intelligent and wide-awake editor who profits by experience.

Every judge and lawyer engaged upon the subject of distribution of property by act of law will welcome the concise, and lucid article on "Descent and Distribution" covering 226 pages, by George E. Tucker, a distinguished writer, editor, and lecturer, whose clear and interesting exposition of legal principles has given added strength, stability, and dignity to the science of law. A welcome equally sincere will be extended to "Discovery," the work of that eminent jurist, author and lecturer, Roderick E. Rombauer, whose patient research, close analysis, and compact expression appear upon every page of his valuable contribution. Nor is there lesser satisfaction in the article on "Dismissal and Nonsuit," by William A. Martin, displaying the close and systematic work of a discriminating lawyer and editor. The next article in order, "Disorderly Conduct," by James Beck Clark, recently deceased, is a concise statement and exposition of the subject. The skillful work of a noted author and editor, Henry Campbell Black, is shown in his short but instructive article on the "District of Columbia."

The second half of this work is well balanced by a number of strong and well edited productions. Among these is "Divorce" a subject of prime importance—in its legal and social phases—growing more and more complicated and abstruse with the increasing number of legal separations in many jurisdictions. The article is in everyway up-to-date, full, ample in illustration, exhaustive in citations, and is an authoritative treatise on the subject. The same commendation may be accorded to the article "Dower," which fully sustains the reputation of an author of national reputation. The subject of "Easements"—of growing importance in view of the rapid development of property and extension o building operations has received a clear and exhaustive treatment by masters of the legal literary craft, Walter H. Michael, and James A. Gwyn, of the editorial staff. Under the title of "Domicile," Mr. H. Gerald Chapin, Editor of the American Lawyer, has contributed a valuable and succinct article which expounds the principles involved in a subject by no means free from difficulty. "Words, Phrases and Maxims," by George A. Benham, embracing nearly 100 pages, is an important and highly useful feature of this volume. These judicial interpretations of words and supported by a great number of cases, being arranged in a logical order—with reference both to law and to grammatical construction—and will be found of the greatest service in the preparation of briefs or arguments. The minor articles on "Detectives," by Frank E. Jennings, "Disorderly Houses," "Drunkards" and "Dueling," by Ernest H. Wells, and "Drains" by Frank W. Jones, are fully up to the standard of the work.

Published by the American Law Book Company, New York.

BOOKS RECEIVED.

The Law of Foreign Corporations and Taxation of Corporations, both Foreign and Domestic. By Joseph Henry Beale, Jr., Bussey Professor of Law in Harvard University. Boston, William J. Nagel, 1904. Sheep, pp. 1175. Price, $6.00. Review will follow.

Notes on the Constitution of the United States, Showing the Construction and Operation of the Constitution as Determined by the Federal Supreme Court, and Containing References to Illustrative Cases from the Interior Federal Courts and State Courts. By William A. Sutherland, of the California Bar. San Francisco: Bancroft-Whitney Company, Law Publishers & Law Booksellers, 1904. Sheep, pp. 988. Price, $6.00. Review will follow.

HUMOR OF THE LAW.

Mrs. Nagger—Perhaps you recall it was on a railroad train that we first met and—Mr. Nagger—Yes—but it's too late now for me to sue the company for damages.

A Texas lawyer was defending a colored kleptomaniac on the plea of insanity. He made an eloquent speech on the irresponsible condition of his client's mind, to the jury, and took his seat. His idiot client reached over, touched his arm, and said emphatically: "You is de biggest fool in dis town." The opposing attorney remarked: "There, I told you he had lucid intervals!"

A modern Mrs. Malaprop was on the witness stand testifying in behalf of a neighbor woman who was suing for a divorce.

"Now, Mrs. Smith," interrogated the attorney, "you say Mrs. Jones was so abused by her husband that her health was undermined?"

"Yes, sir."

"Did she suffer from any illness or complaint as a result?"

"Yes, sir."

"What was that?"

"Nervous prostitution."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ACCIDENT INSURANCE—Blood Poisoning from Cutting Corns.—A death resulting from a self-inflicted knife cut, made by an insured while trimming a corn, which was followed by blood poisoning, is one from an "accidental, external and violent" injury, within the meaning of an accident policy —Nax v. Travelers' Ins. Co., U. S. C. C., E. D. Pa., 130 Fed. Rep. 985.

2. ACCIDENT INSURANCE—Construction of Liability Policy.—An indemnity company, having advised settlement of an action against a master for injuries to a servant, held not liable to reimburse the master for the amount paid, on a promise express or implied.—Chicago-Coulterville Coal Co. v. Fidelity & Casualty Co., of New York, U. S. C. C., W. D. Mo., 130 Fed. Rep. 957.

3. ACCIDENT INSURANCE — Notice under Liability Policy.—Ignorance of one employer of the accident and of the other employer of the policy held not to excuse failure to give notice of accident, as provided by an employers' liability insurance policy.—Deer Trail Consol. Min. Co. v. Maryland Casualty Co., Wash., 78 Pac. Rep. 135.

4. ALTERATION OF INSTRUMENTS—Chancery Practice, Master's Report.—Defendant held not precluded, on hearing of exceptions to master's report, from objecting to contract on account of fraudulent alterations made since transcript left the master.—Bolter v. Kozlowski, Ill., 71 N. E. Rep. 858.

5. ANIMALS—Malicious Mischief —In a prosecution for willfully and maliciously killing or injuring an ox, evidence as to the habits of the ox in breaking into inclosed fields was *prima facie* irrelevant.—Mims v. State, Ala., 37 So. Rep. 354.

6. ANIMALS—Misuse of Horse —Under Act April 27, 1891 (Laws 1891, p. 506, ch. 267), making it a penal offense for any person having the use of a horse under contract with the owner to so drive it as to cause its death, a person cannot be convicted where the death of the horse results from some other cause, as from disease.—State v. Radcliff, Del., 58 Atl. Rep. 943.

7. APPEAL AND ERROR—Failure to Show Error in Brief. —Where appellant's brief and argument do not point out wherein the court erred with respect to its decision of questions of law, the court will not consider such questions.—Duggan v. Ryan, Ill., 71 N. E. Rep. 848.

8. APPEAL AND ERROR—Incapacity of Grantor of Land. —The rule that a party may dismiss his appeal has no application where the party is of unsound mind.—Combs v. Combs, Ky., 82 S. W. Rep. 298.

9. APPEAL AND ERROR—Order Denying New Trial.—A verdict or an order denying a new trial held not reviewable by the circuit court of appeals, unless the trial court's discretion in denying the new trial was abused. —Lazier Gas Engine Co. v. Du Bois, U. S. C. C. of App., Third Circuit, 130 Fed. Rep. 834.

10. APPEAL AND ERROR—Record on Appeal.—Where the court reviews the evidence and expresses its opinion of the case, but there are no special findings of fact and conclusions of law as to it, the oral opinion cannot be considered on appeal.—Guss v. Nelson, Okla., 78 Pac. Rep. 170.

11. ASSAULT AND BATTERY—Chastisement of Pupil.—In the prosecution of a school teacher for whipping a pupil, proof of defendant's good character must be confined to his general character.—State v. Thornton, N. Car., 48 S. E. Rep. 602.

12. ASSAULT AND BATTERY—Use of Reasonable Force in Resisting —Where a traveler in a highway is attacked, he is entitled to use such force as is reasonably necessary to defend himself and his property.—State v. Dyer, Del., 58 Atl. Rep. 947.

13. ASSUMPSIT, ACTION OF—Recovery on Common Counts.—It is not necessary to allege in a special count that defendant waived some of the provisions of the contract sued on, in order to render proof of such waiver admissible in evidence.—Evans v. Howell, Ill., 71 N. E. Rep. 854.

14 BAIL—Effect of Continuance of Case.—The continuance of a criminal case does not release the recognizance.—State v. Morgan, N. Car., 48 S. E. Rep. 604.

15. BANKRUPTCY—Accommodation Indorser.—An accommodation indorser of notes, even before paying, is a creditor of the maker, and a transfer of property to him as security by such maker while insolvent constitutes an act of bankruptcy.—*In re* O'Donnell, U. S. D C., D. Mass., 130 Fed. Rep. 150.

18. BANKRUPTCY—Averment of Occupation.—A petition in involuntary bankruptcy should allege the occupation of the alleged bankrupt, showing him to be within the class subject to such proceedings.—*In re* Callison, U. S. D. C., S. D. Fla., 130 Fed. Rep. 987.

19. BANKRUPTCY—Collusion.—Where a prior suit for the appointment of receivers was collusive, it was ineffective to prevent the appointment of such receivers in a subsequent suit from constituting an act of bankruptcy.—Blue Mountain Iron & Steel Co. v. Portner, U. S. C. C. of App., 130 Fed. Rep. 57.

20. BANKRUPTCY—Costs of Contesting Claim.—Where the costs on the contest of a claim grew out of a controversy between creditors entirely, carried on for the purpose of controlling the election of trustee, they will not be allowed from the estate.—*In re* Worth, U. S. D. C., N. D. Iowa, 130 Fed. Rep. 927.

21. BANKRUPTCY—Effect of Prior Discharge.—A discharge granted to a bankrupt as a member of a partnership, in proceedings instituted by himself, is one granted in voluntary proceedings, and precludes him from obtaining a second discharge within six years.—*In re* Carleton, U. S. D. C., D. Mass., 130 Fed. Rep. 146.

22. BANKRUPTCY—Failure to Surrender Property—To justify an order requiring a bankrupt to turn over money or property to his trustee, under penalty of imprisonment for contempt, it must be shown clearly and beyond a reasonable doubt that he has such money or property in his possession or under his control.—*In re* Goldfarb Bros., U. S. D. C., N. D. Ga., 130 Fed. Rep. 643.

23. BANKRUPTCY—Good Faith of Petitioners.—Where it appears that an adjudication in bankruptcy against a corporation having a large estate is desired by some of the petitioners for purposes other than to secure a ratable distribution of its property, and the good faith

of others is questionable, the court is justified in resolving all doubtful questions against the petitioners.—Lowenstein v. Henry McShane Mfg. Co., U. S. D. C., D. Md., 130 Fed. Rep. 1007.

24. BANKRUPTCY—Jurisdiction.—A federal court held to have acquired jurisdiction of the subject-matter and of an alleged involuntary bankrupt by the service of the petition and subpœna on the bankrupt; a demurrer to such a petition having admitted the filing thereof.—*In re* Brett, U. S. D. C., D. N. J., 130 Fed. Rep. 981.

25. BANKRUPTCY—Loan by Wife.—A loan to a bankrupt by his wife of property received from him by way of a gift, which was void under the law of Massachusetts, where the parties resided, affords no basis for any claim by her against his estate in bankruptcy —*In re* Tucker, U. S. D. C., D. Mass., 130 Fed. Rep. 647.

26. BANKRUPTCY — Provable Claims.—A creditor having a provable claim, although the amount is unliquidated, may file a petition in bankruptcy against his debtor.—*In re* Frederick L. Grant Sltoe Co., U. S. C. C. of App., Second Circuit, 130 Fed. Rep. 881.

27. BANKRUPTCY — Setting Aside Discharge. — The divorced wife of a bankrupt is not entitled to have his discharge set aside on account of a claim for alimony which was not proved in the bankruptcy proceedings, of which she had notice.—Arrington v. Arrington, U. S. D. C., E. D. N. Car., 132 Fed. Rep. 200.

28. BANKRUPTCY—Summary Proceedings.—A court of bankruptcy has no jurisdiction of summary proceedings to recover a preference, where there is no allegation that respondent's claim is colorable only, and objection is promptly taken by the respondent to the form of the proceeding.—*In re* Scherber, U. S. D. C., D. Mass., 130 Fed. Rep. 121.

29. BANKRUPTCY—Surrender of Sheriff to Receiver.—The surrender by a sheriff to a receiver in bankruptcy of property which he had seized on a writ of replevin before he has made his return, operates as an abandonment of the seizure, and the goods are not thereafter in the custody of the state court.—*In re* Hymes Buggy & Implement Co., U. S. D. C., W. D. Me., 130 Fed. Rep. 977.

30. BANKRUPTCY—Transfer of Accounts.—In an action to set aside a transfer of accounts by a bankrupt, an answer which was responsive to the bill and alleged that defendants paid a present, fair, and adequate consideration in cash for the assignment, held sufficient.—McNulty v. Wiesen, U. S. D. C., E. D. Pa., 130 Fed Rep. 1012.

31. BANKRUPTCY — Trover Against Receiver.—A state court has jurisdiction of an action of trover brought against a trustee or receiver in bankruptcy to recover the value of property alleged to have been converted by him as a part of the assets of the estate.—*In re* Spitzer, U. S. C. C. of App., Second Circuit, 130 Fed. Rep. 879.

32. BENEFIT SOCIETIES — Payment of Assessments. —An association cannot assert a forfeiture because assessments were not paid according to the printed by-laws, where by its conduct it has led insured members to believe that the assessments may be paid at other times. —Foresters of America v. Hollis, Kan., 78 Pac. Rep. 160.

33. BILLS AND NOTES—Patent Rights.—An answer alleging that the note sued on was given for a patent right, and that the words "Given for a patent right," were not written therein as required by statute, held not demurrable.—Pinney v. First Nat. Bank, Kan., 78 Pac. Rep. 151.

34. CANCELLATION OF INSTRUMENTS — Conveyance on Agreement to Support.—A conveyance on an agreement for support of the grantor by the grantees held to create an implied trust, which being renounced, equity will grant a reconveyance.—Grant v. Bell, R. I., 58 Atl. Rep. 951.

35. CANCELLATION OF INSTRUMENTS—Life Insurance.—A court of equity having acquired jurisdiction of a suit to cancel an insurance policy during the lifetime of assured, it was not deprived thereof by insured's death, before answer and the bringing of a suit at law on the policy.—Mutual Life Ins Co v. Blair, U. S. C. C., E. D. Mo., 130 Fed. Rep. 971.

36. CARRIERS — Injury to Passengers.—In an action by a passenger to recover for injuries sustained, evidence examined, and held to show that the questions of negligence and obvious risk were for the jury.—Wheeler v. South Orange & M. Traction Co., N. J., 58 Atl. Rep. 927.

37. CITIZENS—Marriage of Alien to Citizen.—Where an alien woman, who has come into this country, marries a citizen of the United States pending proceedings for her deportation under the immigration laws, she at once takes the *status* of her husband, and, unless released from custody, is entitled to be discharged upon writ of *habeas corpus*.—Hopkins v. Fachant, U. S. C. C. of App., Ninth Circuit, 130 Fed. Rep. 839.

38. COLLISION — Dragging Anchor in Gale.—A vessel which dragged her anchors during a high wind and drifted against another anchored vessel held in fault for the collision, on the ground that her anchors were not suitable and safe, or that she was not properly anchored. —The Robert Rickmers, U. S. D. C., D. Wash., 130 Fed. Rep. 638.

39. COLLISION—Towage.—A moving vessel is bound to avoid collision with one at anchor or moored, when she can do so with reasonable care, having regard to her own safety; and this, although the stationary vessel may be in an improper or an unsafe place.—Rebstock v. Gilchrist Transp. Co., U. S. D. C., W. D. N. Y., 132 Fed. Rep. 174.

40. COMMERCE — Exclusive Right to Supply Books.—The interstate commerce law held not violated by Act March 4, 1903 (Acts 1903, p. 167), securing to the successful bidder the exclusive right to furnish school books.—Dickinson v. Cunningham, Ala., 37 So. Rep. 345.

41. CONSPIRACY—Allegation of Means Intended to be Used.—An indictment for conspiracy to defraud the United States by obtaining the entry of imported merchandise without payment of the duty imposed by law must set out, to some extent at least, the means intended to be used, although the details of the plan need not be alleged.—United States v. Grunberg, U. S. C. C., D. Mass., 130 Fed. Rep. 137.

42. CONSPIRACY — Sufficiency of Indictment.—An indictment for conspiracy to summon certain persons as jurors to try a cause need not allege that the constable who summoned the jury had power so to do.—Gallagher v. People, Ill., 71 N. E. Rep. 842.

43. CONSTITUTIONAL LAW — Bankruptcy, Effect of Prior Discharge.—The provision of Bankr. Act July 1, 1898, ch. 541, § 14b, 30 Stat. 550 (U. S. Comp St. 1901, p. 3427), as amended by Act Feb. 5, 1903, ch. 487, § 4, 32 Stat. 797 (U. S. Comp. St. Supp. 1903, p. 411), which requires a discharge to be denied if the bankrupt has been granted a discharge in voluntary proceedings within six years, is applicable to cases where the prior discharge was granted before its enactment.—*In re* Carleton, U. S. D. C., D. Mass., 130 Fed. Rep. 146.

44. CONSTITUTIONAL LAW — Class Legislation. — Act April 20, 1901, being the road law applicable to a certain county, held not obnoxious to Const. art. 11, § 8, forbidding class legislation and partial laws.—Archibald v. Clark, Tenn., 82 S. W. Rep. 310.

45. CONSTITUTIONAL LAW — License Tax of Employment Agencies.—Pub Laws, 1903, p. 347, ch. 247, § 74, taxing the business of procuring laborers, being an exercise of the state's power of taxation, the amount of the tax held not reviewable by the courts.—State v. Roberson, N. Car., 48 S. E. Rep. 595.

46. CONSTITUTIONAL LAW — Statute Prohibiting Trading Stamps.—Laws 1899, p. 298, ch. 60, §§ 1, 2, prohibiting the issuance or use of trading stamps, held unconstitutional as a violation of property rights.—State v. Ramseyer, N. H., 58 Atl. Rep. 958.

47. CONTRACTS — Recovery on Common Counts. — Where a contract has been performed, and nothing remains to be done but to pay the amount due under it, a recovery may be had under the common counts —Evans v. Howell, Ill., 71 N. E. Rep. 854.

48. CONTRACTS—Restraint of Competition.—An agreement by which the stockholders of a corporation, on selling its assets to plaintiff's assignor, agreed not to again engage in a similar business for a specified period in certain localities, held not contrary to public policy.—Davis v. A. Booth & Co., U. S. C. C. of App., Sixth Circuit, 130 Fed. Rep. 31.

49. CONTRACTS — Waiver by Acts Inconsistent with Provisions —The provisions of a written contract may be waived by a participation in the acts done in disregard of it.—Evans v. Howell, Ill., 71 N. E. Rep. 858.

50. COPYRIGHTS—Infringement.—Under federal equity rules the waiver of an answer under oath, where the bill for infringement of copyright prayed discovery, an answer to both allegations and interrogatories did not entitle defendant to answer by way of general denial only. —John Church Co. v. Zimmermann, U. S. C. C., E. D. Wis., 130 Fed. Rep. 652.

51. CORPORATIONS — Contract to Repurchase Stock.—Where defendant repudiated his agreement to repurchase certain stock at par, plaintiffs held entitled to hold the stock as defendant's property and recover its par value.—Osgood v. Skinner, Ill., 71 N. E. Rep. 869.

52. CORPORATIONS—Foreign Corporations, Comity.—A corporation, seeking to invoke the doctrine of comity, must be possessed of some right in the country of its domicile.—Myatt v. Ponca City Land & Improvement Co., Okla., 78 Pac. Rep. 185.

53. CORPORATIONS—Service of Process.—Pierce's Code Wash. § 7216, held not to authorize service of process on the resident agent of a foreign corporation in a transitory action by a servant for injuries which occurred in another state.—Olson v. Buffalo Hump Min. Co., U. S. C. C., D. Wash., 130 Fed. Rep. 1017.

54. CORPORATIONS — Stock Subscription Contract.—In an action on a stock subscription contract, an objection that an offer of evidence was not complete, in that it was not proposed to show that false statements were made with a fraudulent intent, held cured by an instruction.—American Alkali Co. v. Salom, U. S. C. C. of App., Third Circuit, 130 Fed. Rep. 46.

55. COURTS -- Conflicting Jurisdiction. — State court held to have first acquired jurisdiction of the administration of the assets of a corporation, though it had not taken physical custody thereof, and was therefore entitled to their surrender by a receiver appointed by the federal court —Louisville Trust Co. v. Kent, U. S. C. C. of App., Sixth Circuit, 130 Fed. Rep. 820.

56. CRIMINAL EVIDENCE—Affidavit for Continuance.—Where the defendant's affidavits for a continuance in a criminal case do not state that he expected at any time to procure the testimony of the witnesses, error cannot be predicated on refusal to grant it —Territory v. Dooley, Ariz., 78 Pac. Rep. 138.

57. CRIMINAL LAW — Contract for Service.—A defendant, having violated a contract to perform services for a surety who had confessed judgment for him on conviction of a misdemeanor, held subject to prosecution, under Code 1896, § 4751.—McQueen v. State, Ala., 37 So. Rep 360.

58. CRIMINAL LAW — Former Acquittal.—A plea of former acquittal is bad, unless it avers that there was a judgment entered upon the verdict of acquittal in the first case.—State v. Hankins, N. Car., 48 S. E. Rep. 596.

59. CRIMINAL TRIAL—Absence of Judge During Trial.—Absence of the judge from the courtroom during a criminal trial is not cause for reversal, where it is not shown that during his absence there was any proceeding that could have been prejudicial to defendant. — Quigg v. People, Ill., 71 N. E. Rep. 886.

60. CRIMINAL TRIAL—Confessions —That stolen goods were found where defendant said they were held admissible, though the confession was obtained by improper inducements.—Commonwealth v. Phillips, Ky., 82 S. W. Rep. 286.

61. CRIMINAL TRIAL — Conflicting Evidence. — A jury held required to reconcile conflicting testimony, if possible; otherwise, to give credit to such as appears to be the most worthy of credit —State v. Dyer, Dela., 58 Atl. Rep. 947.

62. CRIMINAL TRIAL—Expert Witness on Toxicology.—One by education, profession, and occupation a chemist and professor of chemistry, and also a toxicologist of long experience, held competent to testify in a prosecution for homicide as to effects of poison, though neither a druggist nor pathologist.—Scott v. State Ala., 37 So. Rep. 357.

63. CRIMINAL TRIAL—Homicide.—On trial for murder, a statement in the charge that no circumstances were shown that would mitigate the crime from murder to manslaughter held not error.—State v. Bectsa, N. J., 58 Atl. Rep. 933.

64. CRIMINAL TRIAL—Instruction as to Reasonable Doubt.—An instruction that "reasonable probability" of defendant's innocence was sufficient to sustain a reasonable doubt held not objectionable.—Mims v. State, Ala., 37 So. Rep. 354.

65. CRIMINAL TRIAL—Plea of Former Conviction.—A plea of former conviction cannot be sustained, unless the former crime was the same as that for which he was about to be tried, or was necessarily included therein.—State v. Day, Del., 58 Atl. Rep. 946.

66. CRIMINAL TRIAL—Refusal to Explain Reason for Sustaining Objection.—A remark of the trial judge in a criminal case, when sustaining an objection to testimony, that it "would not explain it," is not prejudical to defendants.—Gallagher v. People, Ill., 71 N. E. Rep. 842.

67. DAMAGES—Abandoning a Going Business.—Measure of damages from breach of contract, where default warrants plaintiff in abandoning a going business, determined.—Martin v. Seaboard Air Line Ry., S. Car., 48 S. E. Rep. 616.

68. DAMAGES—Breach of Contract.—A verdict allowing profits for the unexpired term of a contract, after breach, at the same rate as the proofs showed profits had accrued during the time the contract was performed, held not objectionable as allowing remote and speculative damages.—Lazier Gas Engine Co. v. Du Bois S. C. C. of App., Third Circuit, 130 Fed. Rep. 834.

69. DEATH—Measure of Damages.—In an action against a master for injuries to a servant, in the absence of aggravating circumstances, the measure of damages is the pecuniary loss sustained by plaintiff, and compensation for the suffering endured.—Peterson v. Roessler & Hasslacher Chemical Co., U. S. C. C., D. N. J., 130 Fed. Rep. 156.

70. DEATH—Parents, Pecuniary Loss.—Parents held not entitled to recover for the wrongful death of their son after his marriage.—Texas Portland Cement & Lime Co. v. Lee, Tex., 82 S. W. Rep. 306.

71. DEATH—Transitory Cause of Action.—A cause of action for wrongful death held to accrue in the state where the person killed was domiciled at the time of his death, and not in the state where he was killed.—Stockwell v. Boston & M. R. Co., U. S. C. C., D. Ver., 130 Fed. Rep. 153.

72. DEEDS—Attorney's Fee, in Action to Set Aside.—In a suit to set aside a deed, an allowance of $100 to plaintiff's attorney for successfully defending an appea held erroneous.—Combs v. Combs, Ky., 82 S. W. Rep. 298.

73. DEEDS—Undue Influence.—Voluntary conveyance from father to daughter held void as to sons of th grantor from undue influence.—White v. Daly, N. J., 5 Atl. Rep. 929.

74 DEPOSITS—Payment of Check.—Payment on check drawn under order of court in favor of administrator or their attorney, without naming decedent, held properly refused by trust company on which it was drawn.—Holt v. Colonial Trust Co., 89 N. Y. Supp. 955.

75. DIVORCE—Residence.—Shannon's Code, § 4203, requiring two years' residence of the petitioner in an action for divorce, held to apply only where the ground

for divorce arose in another state.—Carter v. Carter, Tenn., 82 S. W. Rep. 309.

76. EQUITY—Multifariousness.—An answer and a cross-bill in equity should be separate pleadings, although they must be filed under one cover.—United Cigarette Mach. Co. v. Wright, U. S. C. C., E. D. N. Car., 132 Fed. Rep. 195.

77. EQUITY—Multiplicity of Suits.—An adequate remedy at law does not exist where a multiplicity of actions are required to obtain complete relief.—Mutual Life Ins. Co. v. Blair, U. S. C. C., E. D. Mo., 130 Fed. Rep. 971.

78 EQUITY—Powers of Master in Chancery.—A master in chancery is merely a ministerial officer of the court, and cannot grant leave to make a copy evidence in place of the original.—Bolter v. Kozlowski, Ill., 71 N. E. Rep. 858.

79. EVIDENCE—Admissibility of Photographs.—In an action for wrongful death, photographs of the decedent taken just before and also after the injury causing the death, are admissible.—Davis v. Seaboard Air Line Ry., N. Car., 48 S. E. Rep. 591.

80. EVIDENCE — Expert Testimony. — The question whether a written instrument is a duplicate of another, within the meaning of a statute, is not one upon which expert testsmony is competent, but is one for the court. —Wright v. Michigan Cent. R. Co., U. S. C. C. of App., Sixth Circuit, 130 Fed. Rep. 843.

81. EVIDENCE — Mechanic's Lien.—In a consolidated suit of subcontractors against the owner of the building, record held to show that statement of lien by subcontractor was introduced in evidence.—Wheelock v. Hull, Iowa, 100 N. W. Rep. 863.

82. FIRE INSURANCE—Subrogation.—An insurer, which by payment of a loss has become subrogated to a right of action of the insured against a third party, must recover thereon, if at all, in the right of the insured alone, and its own declarations or admissions are not admissible against such right.—F. C. Judd & Root v. New York & T. S. S. Co., U. S. C. C., E. D. Pa., 130 Fed. Rep. 991.

83. FRAUDULENT CONVEYANCES — Rights of Simple Contract Creditor.—A simple contract creditor held not entitled to maintain a bill in equity in the federal circuit court to set aside a fraudulent conveyance of his debtor's property and have the same administered through a receiver.—Viquesney v. Allen, U. S. C. C. of App., Fourth Circuit, 130 Fed. Rep. 21.

84. GAMING—Contract to Repurchase Stock.—A contract to repurchase stock transferred as a part of the purchase price of other property, at a future time, held not a violation of 1 Starr & C. Ann. St. 1896, p. 1295, ch. 38, par. 253.—Osgood v. Skinner, Ill., 71 N. E. Rep. 869.

85. HIGHWAYS—Contributory Negligence of Driver.—A town is not liable for injuries caused by a defect in a highway, unless it was the sole cause of the injury.—Orr v. City of Oldtown, Me., 58 Atl. Rep. 914.

86. HIGHWAYS—Injunction, Irreparable Injury.—Interlocutory injunction restraining obstruction of street, not essential to the protection of any legal right of plaintiff pending litigation, held properly dissolved.—Northrop v. Simpson, S. Car., 48 S. E. Rep. 613.

87. HOMICIDE—Duty to Retreat.—Except under circumstances involving the right to repel a felonious assault, a person attacked, by reason of his freedom from fault, etc., is not absolved from the duty to retreat.—Kirkland v. State, Ala., 37 So. Rep. 352.

88. HOMICIDE—Evidence, Previous Threats.—Where, in a prosecution for homicide, defendant was not entitled to plead self-defense, evidence of previous threats by deceased was irrelevant.—Gilmore v. State, Ala., 37 So. Rep. 359.

89. HUSBAND AND WIFE—Harboring Married Woman. —In an action to recover damages for harboring plaintiff's wife after notice to do so, it is error to charge that the burden of showing justification is on the defendants. —Powell v. Benthall, N. Car., 48 S. E. Rep. 598.

90. HUSBAND AND WIFE—Loan by Wife.—Where a husband receives from his wife advances of money from her separate estate for the purpose of improving his lands, the presumption, in equity, is that the advance was a loan.—Brady v. Brady, N. J., 58 Atl. Rep. 981.

91. INDICTMENT AND INFORMATION — Sufficiency. — A conviction on a general verdict will be sustained even though some of the counts are faulty, if there be one good count in the indictment.—Gallagher v. People, Ill., 71 N. E. Rep. 842.

92. INJUNCTION—Multiplicity of Suits. — Equity has jurisdiction of an action to enforce a contract by which the sellers of a business agreed not to again engage in the same for a definite time, etc., to prevent a multiplicity of suits at law, and because of the difficulty of estimating damages.—Davis v. A. Booth & Co., U. S. C. C. of App., Sixth Circuit, 130 Fed. Rep. 31.

93. INJUNCTION—Staying Execution.—The remedy provided by Civ. Code Prac., § 295, for assessment of special damages on dissolution of an injunction to stay proceedings on a judgment, held exclusive.—Mason, Gooch & Hoge Co. v. Mechanics' Lien & Trust Co., Ky., 82 S. W. Rep. 290.

94. INTEREST—Agreement to Pay Interst on Interest.—After interest becomes due, an agreement to pay interest on interest is valid; the forbearance to enforce payment and extension of time being a sufficient consideration.—Gay v. Berkey, Mich., 100 N. W. Rep. 920.

95. INTOXICATING LIQUORS—Evidence as to Illegal Sale.—In a prosecution for illegally selling intoxicating liquors, evidence is not insufficient because the witnesses were unable to identify the particular individual who furnished the money observed to pass.—State v. Durein, Kan., 78 Pac. Rep. 152.

96. INTOXICATING LIQUORS—Minors' Signatures to Petition for License.—Under a city ordinance requiring the petition for a dram shop license to be signed by the owners of property in the block where the dramshop is to be located, a minor held not a qualified petitioner.—People v. Griesbach, Ill., 71 N. E. Rep. 874.

97. JUDGMENT—Dormancy.—The issuance of special executions held not to prevent the judgment against one defendant from becoming dormant.—Watson v. Keystone Iron Works Co., Kan., 78 Pac. Rep. 156.

98. JUDGMENT—Issues Determined.—Where a judgment foreclosing a mechanic's lien showed on its face that a certain issue had not been determined, such judgment was not *res judicata* thereof, though the issue might have been determined in such suit.—Koeppel v. Macbeth, 89 N. Y. Supp. 969.

99. JUDGMENT—Res Judicata.—A judgment dismissing a proceeding for confirmation of a special assessment held not *res judicata* of a proceeding subsequently brought under a different ordinance and statute.—Lusk v. City of Chicago, Ill., 71 N. E. Rep. 878

100. JUDICIAL SALES—Inadequate Price.—A sale of real estate under judicial decree for less than two-thirds of its appraised value held subject to redemption. —Combs v. Combs, Ky., 82 S. W. Rep. 298.

101. JURY—Age of Jurors on Panel — Where two of the jurors regularly on a special panel in a criminal case were over 65 years of age, the special panel was not thereby vitiated —State v. Bectsa, N. J., 58 Atl. Rep. 933.

102. JURY — Qualification —One is not disqualified as a juror because he is more in favor of the enforcement of the law that appellant is charged with having violated than of any other law.—State v. Kelley, Kan., 78 Pac. Rep. 151.

103. JUSTICES OF THE PEACE—Pleading.—Where in a justice court defendant files an answer, it will limit the issues as under the ordinary rules of pleading.—Royal Fraternal Union v. Crosier, Kan., 78 Pac. Rep. 162.

104. LANDLORD'S LIEN—Wrongful Levy.—Where a landlord was deprived of his lien by reason of a wrongful levy, his measure of damages was the amount of the rent not otherwise collectible.—Burton v. Dangerfield, Ala., 37 So. Rep. 350.

105. LOGS AND LOGGING—Sale of Standing Timber.—Under a contract for the sale of standing timber, giving the purchaser 15 years to cut the same, the cutting need not be continuous.—Hardison v. Dennis Simmons Lumber Co., N. Car., 48 S. E. Rep. 588.

106. MASTER AND SERVANT—Assumed Risk.—Under a declaration in an action by a servant against the master for personal injuries, evidence that the servant was acting under a specific order at the time he was injured held admissible.—Henrietta Coal Co. v. Campbell, Ill., 71 N. E. Rep. 863.

107. MASTER AND SERVANT—Assumed Risk.—In an action for death of a servant, an instruction that, if an ordinarily prudent person would not have done as deceased did, defendant was not liable, held properly refused.—Texas Portland Cement & Lime Co. v. Lee, Tex., 82 S. W. Rep. 305.

108. MASTER AND SERVANT—Defective Appliances.—In an action by an employee for injuries received resulting from the explosion of a gasoline torch, held error to refuse a charge that if the torch was not defective, and was not dangerous, but properly used, they must find for defendant.—Purcell v. Hoffman House, 89 N. Y. Supp. 975.

109. MASTER AND SERVANT — Defective Roadway to Mine.—A mine owner owes to his servants, who are required to pass along a roadway in the mine, the legal duty to maintain the same in a reasonably safe condition.—Henrietta Coal Co v. Campbell, Ill , 71 N. E. Rep. 863.

110. MASTER AND SERVANT — Duty to Give Warning of Danger.—The duty of a master to warn a servant of danger cannot be delegated to a fellow-servant, so as to affect master's liability.—Rogers v. Cleveland, C., C. & St. L. Ry. Co., Ill., 71 N. E. Rep. 850.

111. MASTER AND SERVANT — Injury to Miner.—In an action for injuries to an employee in a mine by being struck by material falling from the roof, evidence held to justify submission of defendant's negligence to the jury.—Tennessee Coal, Iron & R. Co. v. Garrett, Ala., 37 So. Rep. 355.

112. MASTER AND SERVANT—Safe Place to Work.—A miner is not under any duty to inspect the mine, but has a right to rely on the performance of such duty by the owner, unless the danger is obvious.—Bunker Hill & Sullivan Mining & Concentrating Co. v. Jones, U. S. C. C. of App., Ninth Circuit, 130 Fed. Rep. 813.

113. MECHANICS' LIENS—Notice.—A notice of lien held valid as to the value of material furnished under the contract alleged therein, though it inaccurately states what materials were furnished under the contract.—Continental Building & Loan Assn. v. Hutton, Cal., 78 Pac. Rep. 21.

114. MECHANICS' LIENS — Subcontractor.—By acceptance of order of contractor on owner of building, without preserving right to a lien, subcontractor held to take his chances on there being a balance due and payable to the contractor.—Wheelock v. Hull, Iowa, 100 N. W. Rep. 863.

115. MINES AND MINERALS — Extralateral Rights.—Where the apex of a vein is of such width as to extend beyond the side line of a claim onto a junior claim, the extralateral rights therein belong to the senior claim within its extended end line planes. — Empire State Idaho Mining & Developing Co. v. Bunker Hill & S. Mining & Concentrating Co., U. S. C. C. of App., Ninth Circuit, 130 Fed. Rep. 591.

116. MINES AND MINERALS — Extralateral Rights.—A bill filed by the owner of a lode mining claim to establish extralateral rights and quiet its title need not allege the general course of the vein beyond the limits of the claim.—Last Chance Min. Co. v. Bunker Hill & S. Mining & Concentrating Co., U. S. C. C. of App., Ninth Circuit, 130 Fed. Rep. 579.

117. MONOPOLIES—Exclusive Right to Supply School Books.—Act March 4, 1903 (Acts 1903, p. 167), securing to the successful bidder the exclusive right to supply school books, held not to create a monopoly or grant a special privilege, within the inhibition of Const. art. 1, § 23.—Dickinson v. Cunningham, Ala., 37 So. Rep. 345.

118. MORTGAGES — Parties, in Suit by Trustee.—Under Civil Code Prac. § 21, held, that in a suit by a trustee to foreclose a mortgage the *cestui que trust* need not be made a party.—Vance v. Lane's Trustee, Ky., 82 S. W. Rep. 297.

119. MORTGAGES — Satisfaction, Entry on Record.—Where a return of "*non est inventus*" was made to a rule to show cause why a mortgage should not be satisfied of record, it should be amended to show a return of "*nihil habet.*"—*In re* Walsh, Del., 58 Atl. Rep. 945.

120. MUNICIPAL CORPORATIONS—Assessment for Street Improvement. — Where an ordinance for the improvement of a street by the laying of water pipes did not provide for any fire hydrants, no assessments could be levied to pay for such hydrants. — Town of Cicero v. Green, Ill., 71 N. E. Rep. 884.

121. NAVIABLE WATERS—Obstructions.—That a riparian owner has monopoly of land with no public road to the water held not to affect the navigability. — State v. Twiford, N. Car., 48 S. E. Rep. 586.

122. NUISANCE—Effect of Voluntary Abatement Pending Suit.—Voluntary abatement of a nuisance pending a suit to abate the same held not to deprive the court of its right to fix the damages allowable and disregard the verdict of a jury thereon.— McCarthy v. Gaston Ridge Mill & Min. Co., Cal., 78 Pac. Rep. 7.

123. OFFICERS—Board of Local Improvements. — The duty of a board of local improvements to enforce the execution of a paving contract held a ministerial one, for breach of which the members are personally liable. —Gage v. Springer, Ill , 71 N. E. Rep. 860.

124. PARTNERSHIP — Burden of Proving. — Where one denies that he is a member of a firm, the burden is on the party alleging partnership.— Strickler v. Gitchel, Okla., 78 Pac. Rep. 94.

125. PARTY WALLS—Implied Agreement.—An implied promise on the part of a land owner to pay his part of the cost of a party wall held raised by the facts.—Evans v. Howell Ill., 71 N. E. Rep. 854.

126. PLEADING—Scandal —Scandal in a pleading held to consist of an unnecessary allegation affecting the moral character of an individual, or the statement of matter contrary to good morals or unbecoming the dignity of the court.—McNulty v. Wieson, U. S. D. C., E. D. Pa., 130 Fed. Rep. 1012.

127. PRINCIPAL AND AGENT—Contract for Collection of Judgment. — In an action on a contract for the collection of a judgment, plaintiff held only entitled to recover one-half of the amount for which a settlement was made between the debtor and the judgment creditor.—Sowles v. First Nat. Bank, U. S. C. C., D. Ver., 130 Fed Rep. 1009.

128. PRINCIPAL AND SURETY — Contribution Between Co-Sureties.—Where two persons are co-sureties on a note, and one of them pays the entire debt, he is entitled to contribution. — Strickler v. Gitchel, Okla., 78 Pac. Rep. 94.

129. PRINCIPAL AND SURETY—Obligation of Surety.—Surrender of a note by a bank on which plaintiff's liability as surety had been discharged under a previous agreement held to cure the bank's attempt to collect it, in so far as it constituted a breach of such agreement.—Sowles v. First Nat. Bank, U. S. C. C., D. Ver., 130 Fed. Rep. 1009.

130. PRIVATE ROADS—Return of Commissioners. — Return of commissioners laying out a private road held not required to give its width, in a county where the statute says it shall be 25 feet.—*In re* Rickards, Del., 58 Atl. Rep. 945.

131. PUBLIC LANDS—Riparian Rights.—Lands covered by navigable waters are not subject to entry, under Code § 2751.—State v. Twiford, N. Car., 48 S. E. Rep. 586.

132. RAILROADS—Death While Violating Instructions. —A railroad company held not liable for the death of a servant, killed while violating the instructions of the

engineer not to go between cars while he was receiving instructions from an experienced switchman.—McMillan v. Grand Trunk Ry. Co. of Canada, U. S. C. C. of App., First Circuit, 130 Fed. Rep. 827.

133. RAILROADS — Forfeiture of Lease. — A lessor of railroad property held not entitled to a forfeiture of the lease for default in a payment of rental, as against th receivers of the lessee, who made the payment whic was received and retained, after the forfeiture had been declared.— Johnson v. Lehigh Valley Traction Co., U. S. C. C., E. D. Pa., 130 Fed. Rep. 932.

134. RAILROADS — Resisting Trespasser Climbing on Moving Train.—A trespasser, while climbing on a rapidly moving train, may be ordered off, or his attempt re sisted with reasonable force.—Powell v. Erie R. Co , N. J., 58 Atl. Rep. 930.

135. REMOVAL OF CAUSES—Effect of Attachment.—An attachment granted by a state court in a suit in which service was made by publication cannot be vacated on removal merely because such service is not provided for by the federal practice in such actions, being protected by Removal Act March 3, 1875, ch. 137, § 4, 18 Stat. 471 [U. S. Comp. St 1901, p. 511]. — Blumberg v. A. B. & E. L. Shaw Co., U. S. C. C., S. D. N. Y., 130 Fed. Rep. 608.

136. REMOVAL OF CAUSES—Sufficiency of Allegation.— n allegation in a petition for removal that defendant is a citizen of a state other than that in which the suit is pending is not equivalent to an allegation that he is a "non-resident of that state," and does not show his right to a removal.—Irving v. Smith, U. S. C. C., D. Oreg., 132 Fed Rep. 207.

137. REPLEVIN—Title to Maintain.—Replevin cannot be maintained against one not in the actual or constructive possession of the property.—Robb v. Dobrinski, Okla., 78 Pac. Rep. 101.

138. REWARDS—Offer by County Commissioners.—Under Gen. St. 1901, §§ 5760, 7332, conferring the authority to offer rewards on the governor, county commissioners have no authority to offer a reward for the arrest and conviction of persons charged with crime.—Felker v. Board of Comrs. of Elk County, Kan., 78 Pac. Rep. 167.

139. SALES—Election of Remedies.—Where personalty is conditionally sold, the seller cannot, until he has performed such conditions, elect to treat the property as that of the purchaser and sue for the price.—American Soda Fonntain Co. v. Gerrer's Bakery, Okla., 78 Pac. Rep. 115.

140. SALES—Entirety of Contract.—A contract to build and install several machines held an entire contract.—Inman Mig. Co. v. American Cereal Co., Iowa, 100 N. W. Rep. 860.

141. SCHOOLS AND SCHOOL DISTRICTS — Corporal Punishment.—When the correction administered by a school teacher is not immoderate, its legality or illegality must depend entirely on the *quo animo* with which it is administered.—State v. Thornton, N. Car., 48 S. E. Rep. 602.

142. SCHOOLS AND SCHOOL DISTRICTS — Exclusive Right to Supply Books. — Act March 4, 1903 (Acts 1903, p 167), securing to the successful bidder the right to supply school books, held not invalid on the ground that the contract provided for is not one between the state and such bidder.—Dickinson v. Cunningham, Ala., 37 So. Rep. 345.

143. SPECIFIC PERFORMANCE—Contract to Issue Stock. —A bill in equity will not lie to compel specific performance of a contract to issue corporate stock to plaintiff, in the absence of an allegation and proof showing that plaintiff has not an adequate remedy at law.—Kennedy v. Thompson, 89 N. Y. Supp. 963.

144. SPECIFIC PERFORMANCE—Life Insurance.—An insurance policy held in effect an agreement to grant an annuity, and therefore a proper subject for specific performance.—Mutual Life Ins. Co. v. Blair, U. S. C. C., E. D. Mo., 131 Fed. Rep. 971.

145. SPECIFIC PERFORMANCE — Part Performance of Parol Agreement.—A parol agreement for the sale of land will be specifically enforced, where there has been such part performance as would make it impracticable to place the parties in their original position.—Halsell v Renfrow, Okla., 78 Pac. Rep. 118.

146. STATUTES — Impeachment. — Published record of joint resolutions of congress held not impeachable by proof that they were not approved until a date subsequent to that disclosed by the record.—Gibson v. Anderon, U. S. C. C. of App., Ninth Circuit, 130 Fed. Rep. 39.

147. STREET RAILROADS—Speed of Car.—That a street car is run in a city at the rate of eight or ten miles an hour held not of itself a violation of law.—Reid Ice Cream Co. v. Interurban St. Ry. Co., 89 N. Y. Supp. 968.

148. TAXATION — County Commissioners —On dismissing bill to set aside tax assessment, the county commissioners were guilty of irregularities, and costs were properly imposed on county.—Manor Real Estate & Trust Co. v. Cooner, Pa., 58 Atl. Rep. 918.

149. TAXATION—Recovery of Taxes Paid.—The rule of equity that one shall not be relieved of his share of the burden held not to apply in an action at law to recover a tax erroneously spread and paid under protest —Murphy v. Dobben, Mich., 100 N. W. Rep. 891.

150. TENANCY IN COMMON—Services of Co-Tenant.— A tenant in common in lands cannot recover of his cotenant for services rendered in connection therewith.— Gay v. Berkey, Mich., 100 N. W. Rep. 920.

151. TRADE MARKS AND TRADE NAMES—Unfair Competition.—A bill alleging that defendants make a medicinal preparation similar to one sold by complainant which they have given a similar name and have supplied to customers asking for complainant's preparation, states a cause of action.—M. J. Breitenbach Co. v Spangenberg, U. S. C. C., S. D. N. Y., 130 Fed. Rep. 160.

152. TRESPASS—Cutting Timber.—Where the cutting of logs from plaintiff's land constituted a wanton trespass, plaintiff was entitled to recover the value of the logs at the place where they were identified.—Jones Lumber Co. v. Gatliff, Ky , 82 S. W. Rep. 295.

153. TRIAL—Expressing Opinion upon the Facts.— Where the decided weight of evidence on an issue is in favor of one party, it is proper for the judge in a federal court to express his opinion to that effect in his charge to the jury, leaving it to them, however, to determine the fact.—Butler v. Barret & Jordan, U. S. C. C., M. D. Pa., 130 Fed. Rep. 944.

154. TRUSTS—Payment of Debts.—Where by an arrangement between the parties interested in an estate the debts were partly paid from the income of the estate devised to trustees, such trustees took the same *cum onere*.—Jestram v. McAuslan, R. I., 58 Atl. Rep. 952.

155. VENDOR AND PURCHASER—Real Estate Brokers.— A real estate broker cannot collect the price, and where a purchaser, without demanding written authority, pays money to be applied on the price of land, he makes the broker his own agent.—Halsell v. Renfrow, Okla., 78 Pac. Rep. 118.

156. WATERS AND WATER COURSES—Water Franchise. —A municipal ordinance granting a water company a franchise to operate in the city held to constitute a contract between the city and the corporation after acceptance.—Armour Packing Co. v. Metropolitan Water Co., U. S. C. C. of App., Third Circuit, 130 Fed. Rep. 851.

157. WEAPONS—Admissibility of Evidence.—In a prosecution for carrying a concealed weapon, permitting state to prove that defendant was drunk at the time held error.—Gainey v. State, Ala., 37 So. Rep. 355.

158. WILLS—Contest, Motion for New Trial.—Where a statement on motion for a new trial in a will contest was objected to, it was the duty of the party objecting to file proposed amendments thereto.—Vatcher v. Wilbur, Cal., 78 Pac. Rep. 14.

159. WITNESSES—Concealed Weapons.—In a prosecution for carrying a concealed weapon, state held not entitled to call for particulars of a difficulty brought out in cross-examination of a state's witness —Gainey v. State, Ala., 37 So. Rep. 355.